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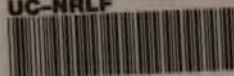
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THE NEUTRALIZATION OF STATES

A STUDY IN DIPLOMATIC HISTORY
AND
INTERNATIONAL LAW

BY

CLAIR FRANCIS LITTELL, A. B.

*Instructor in European History and International Law
in Allegheny College*

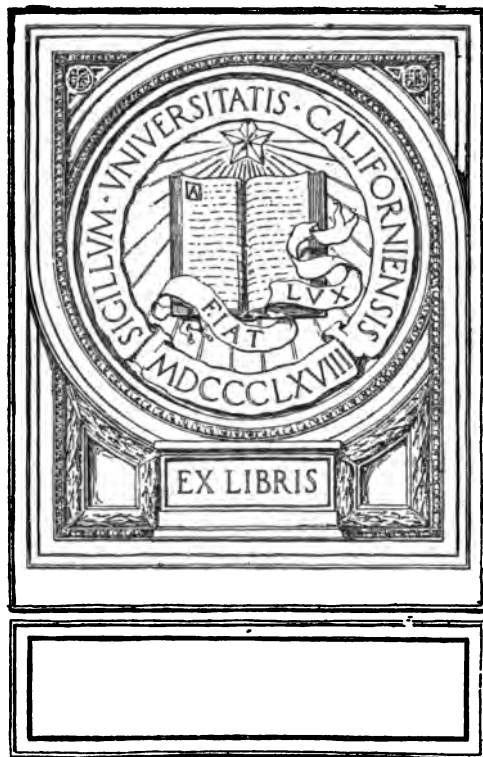
*Sometime Carnegie Endowment Fellow in International Law
in Columbia University*

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
IN COLUMBIA UNIVERSITY

MEADVILLE, PA.

1920

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PREFACE

The purpose of this monograph is to present the historical development of the institution known as Permanent Neutrality as applied to states, together with the chief problems which have arisen for solution in the states which have been placed under that regime; and to show how such problems have been handled. Permanent Neutrality though frequently regarded of but slight importance, has, in reality, played a very important part in European history. An understanding of its principles and interpretation is absolutely essential for an appreciation of the history of Switzerland, of Belgium, and of Luxemburg; and these small states have played in European affairs a part out of all proportion to their size.

The field was suggested to the author when investigating an allied subject. He was surprised to find that Permanent Neutrality, although the subject of a careful study by Piccioni in French and by Richter in German, had apparently never been written up in the English language. The subject seemed particularly opportune because of the marked increase in interest in America in Belgium and her history, but this item played no part in determining its selection.

The author wishes to acknowledge his indebtedness to Professor John Bassett Moore, Hamilton Fish Professor of International Law and Diplomacy in Columbia University, for invaluable advice both on the subject matter and the arrangement of the dissertation. His suggestions on the section dealing with Samoan affairs were especially helpful. His gratitude is also due to Professor Munroe Smith, and to Mr. Henry Fraser Munro, under whose inspiring leadership he was privileged to work during his stay at Columbia; and to his friend, Professor Harry James Carman, of Columbia College, for his interest and constant encouragement.

Meadville, Pa., Dec. 1, 1920.

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ABBREVIATIONS

- R. D. I. P.* = Revue générale de droit international public.
R. D. I. = Revue de droit international et de législation comparée.
R. H. D. = Revue d'histoire diplomatique.
R. D. M. = Revue des deux mondes.
P. S. Q. = Political Science Quarterly.
Fort. Rev. = Fortnightly Review.
C. M. H. = Cambridge Modern History.
B. B. B. = British Blue Book.
B. G. B. = Belgian Grey Book.
F. Y. B. = French Yellow Book.
State Papers = British and Foreign State Papers.

CHAPTER I

THE ORIGIN OF PERMANENT NEUTRALITY

SIMPLE neutrality is the status in which all powers other than those taking part as combatants find themselves upon the outbreak of war. A neutral may not, without losing this status, take any part whatever in the conflict; and such favors as it may legally show must be conferred upon all belligerents without partiality.¹ On the other hand, neutral states are entitled to privileges of inviolability of soil, and to commercial rights which may not be infringed upon by the belligerents. It is in the development of respect for these so-called neutral rights that we find the germ of the idea of permanent neutralization.

The permanently neutral state occupies a position which differs to some extent from that of the state which has merely assumed a position of neutrality. Simple neutrality exists only in time of war, and is assumed by deliberate choice on the part of the sovereign power of the state concerned; but permanent neutrality exists alike in times of war and of peace, and is not necessarily the result of deliberate choice on the part of the state concerned, but may be imposed upon it by joint action of other powers.² The permanently neutralized state can not, without compromising its position, engage in any warfare other than of a strictly defensive nature; nor can it, in time of peace, join in any international agreement, or engage in any international relations,

¹ Phillimore, R., *Commentaries on International Law*, (4 vols., 3rd ed. London, 1879). III, 225.

² Morand, M., *Les origines de la neutralité perpétuelle*, R. D. I. P. I., (1894), 523.

which may be liable to involve it in foreign wars.¹ In return for this surrender of a part of its sovereignty,² the permanently neutralized state receives, upon its adoption of this status, a guarantee from the powers most immediately concerned that they will respect, and cause to be respected, the neutrality which has been established. Hence, in time of war, which is the only time when the neutralized state can be conceived of as in jeopardy, it is entitled to all the privileges of other neutrals, and is doubly protected by this guarantee of the powers. The conception of neutrality itself is the same in both cases, and is merely given a special application in the case of permanent neutralization.

Neutrality as a legal status is a comparatively modern conception.³ The Bible describes the great Hebrew prophet urging his people to avoid "entangling alliances" with their powerful neighbors, Egypt and Assyria;⁴ but the fact that Judea was able to maintain its independence and national integrity for a long time was not due to any respect on the part of its neighbors for neutral rights. Nor yet did Imperial Rome know such a thing as neutrals. All were either for her or against her.⁵ During the time of the barbarian invasions, and the period of chaos following, there was little opportunity for further acceptance of the rights of neutrals. It was in the realm of commerce that organized law in an international sense first came into existence. During the period of transition between the 13th and 14th centuries there appeared at Barcelona, in Spain, a system of maritime

¹ Funck-Brentano et Sorel, *Précis du droit des gens*, (3rd ed. Paris, 1900), 153.

² Milovanowitch, M., *Les traités de garantie au XIXe siècle*, (Paris, 1888), 144.

³ There is an excellent history of the development of respect for the rights of neutrals in the introduction to Kleen, R., *Lois et usages de la neutralité*, (2 vols., Paris, 1898), I.

⁴ Isaiah, XXX, 1-5; XXXI, 1-3.

⁵ Rivier, A., *Principes du droit des gens*, (2 vols., Paris, 1896), II, 210.

laws known as the *Consolato del Mare*.¹ The purpose of this law was to regulate commerce in the Mediterranean Sea, in peace as well as war. It was adopted, to a large extent, by all sea-faring peoples of the time. A little later the Hanseatic League was formed, to protect the trade of the cities of Northern Europe, and a rough working code was developed to govern the land trade between them. But when the discovery of new continents aroused the desire of the nations for conquest, and caused both commerce and war to be conducted on a much larger scale than before, what little international law there was at the time broke down. The maritime states engaged in preying on each other's commerce in far-away seas, and a system of "buccaneering" was developed, which lacked but little of piracy. In their effort to alleviate this deplorable condition of affairs, the nations of Europe resorted to a network of international agreements which weakened the legal status of neutrality by giving the impression that neutral rights could be only obtained by treaty.²

In *De Jure Belli ac Pacis* Grotius, although he devoted but a few pages to the rights of neutrals, whom he describes by the Latin phrase *Hi sunt medii in Belli*,³ again raised neutrality to the dignity of a legal status. Other writers on international law made substantial contributions to the theory of neutral rights, until by the close of the 17th century it was fairly well worked out; but here, as in all international relations, theory was far in advance of practice, and the laws of neutrality lay as a dead letter during the great wars of that and the succeeding century. During the Napoleonic Wars, recriminations reached their climax in the famous Continental System of Bonaparte, and the decrees of Milan

¹ Kleen, 1, 5.

² Kleen, I, 11-12.

³ Emmanuel Descamps, *L'etate neutre a titre permanent*, (Brussels and Paris, 1912), wittily translates this, "Those who are between two fires," 13.

and Berlin, with their counterparts, the British Orders in Council.¹

So constantly had neutral commerce been the prey of the warring powers that in 1780 several northern nations undertook the novel experiment of uniting to enforce by arms their right to sail the sea as neutrals. This was the famous Armed Neutrality, originated by the energetic Catharine II of Russia, and joined in by Denmark, Sweden, and after some delay, by Prussia.² Thus it became evident by the close of the 18th century, that the conception of neutral rights had become so definite that neutral states were ready to go to war rather than submit to their infringement by belligerents. Powerful as was the influence of the Armed Neutralities of Europe in bringing about this result, it may justly be said that the conduct of the new American Republic had not less to do with the exaltation of neutral rights.³ In 1798 the United States, while attempting to maintain neutrality in the struggle that was going on between England and France, was forced into a state of limited war with the latter, and this condition lasted for two years;⁴ and in 1812, during the great World War then raging, rather than submit to the constant violation of her rights as a neutral, she went to war with Great Britain.⁵

This, then, is the point to which respect for neutral rights had developed at the time when the first experiments in permanent neutralization were made. We shall now give our attention to certain international arrangements which bear some resemblance to the regime of permanent neutrality, and which may have paved the way, to some extent, for the

¹ *Cambridge Modern History*, (13 vols., New York and London, 1903). IX, 361ff.

² *C. M. H.*, IX, 42ff.

³ Hall, W. R., *A Treatise on International Law*, (6th ed. London and New York, 1909), 587.

⁴ Moore, J. B., *The Principles of American Diplomacy*, (New York and London, 1918), 59.

⁵ *Ibid.*, 61.

acceptance of that status in its entirety by the Congress of Vienna, in 1815. We shall discuss briefly (1) the negotiations directed toward a joint guarantee of Poland, in 1791; (2) the formation of the College of Free Cities within the Empire, by the Recess of the Imperial Diet, of 1803; (3) the attempt to effect the permanent neutralization of Malta, by the Treaty of Amiens, in 1802; and, (4) the traditional neutral policy of the Swiss people.

The phenomenal growth of the power of Prussia during the latter half of the 18th century threatened to eclipse the glory of the House of Habsburg. When, after a revolution in Poland had overturned the constitution which had been guaranteed by the neighboring powers, the Prussian government began to urge a second division of that unfortunate country, Leopold II of Austria, becoming convinced that this division would not be as favorable to himself as to Prussia, resolved to try an experiment in diplomacy. He proposed to the Empress Catharine, of Russia, a policy which might be followed by those two states to the exclusion of Prussia.¹ The integrity of Poland should be guaranteed, in order that this power might furnish a check to Prussian aggression; and, at the same time, lest their ward itself should become powerful enough to be a menace to the welfare of its guardians, the constitution of Poland was to be guaranteed by the courts of Austria and Russia, thus making impossible those internal reforms by which alone it could be rejuvenated. Catharine, who undoubtedly had her own plans as to the future of Poland, refused to commit herself.

Leopold then turned to Prussia, and succeeded in concluding a treaty, signed July 25, 1791, by a secret article of which it was agreed to guarantee the integrity and the maintenance of the free constitution of Poland.² It was also

¹ Martens, F. de, *Recueil des principaux traités et conventions conclus par la Russie avec les puissances étrangères*, (St. Petersburg, 1874), II, 195.

² Martens, G. F. de, *Recueil des principaux traités d'alliance, etc., conclus par les puissances de l'Europe*, (Göttingen, 1st ed. 1795. 2nd ed. 1831). 1st ed. V. 7.

stipulated that Russia should be invited to accede to the treaty, and Leopold now hoped that the terms of the convention would be acceptable to the Empress. Catharine was, however, merely waiting for a favorable opportunity to carry out her own plans. She had not long to wait, for the outbreak of the French Revolution removed for a time from the sphere of international activities the one power which might have supported Austria in her effort to maintain the national integrity of Poland.¹ At the same time, the death of Leopold II brought Francis II, the last of the Emperors, to the throne. Isolated in European affairs, and constantly threatened by war with the Republicans of France, the new Emperor entered into an alliance with Russia by which Poland was sacrificed, and the second dismemberment was perpetrated.

✓ What has the treaty of 1791 in common with the later system of permanent neutralization? Certainly but little; so little that it is seldom noticed by writers on the subject. Yet it was an effort to assure the political independence of a weak nation by a coalition of its powerful neighbors, and was designed by the proposing party to keep that weak nation from destruction. The benefits of the transaction were to be mutual; for, according to the secret article, along with the preservation of the integrity of Poland went also "the interests and tranquillity of the neighboring powers." The proposition was "to destroy all jealousy or apprehension of preponderance;" how could better be expressed the motive which prompted the neutralization of Belgium in 1830, or of ✓ Luxemburg in 1867? The proposal carried with it an international guarantee, an indispensable element of a treaty of permanent neutralization. It was a proposal for a joint guarantee of the political constitution and the independence of a weak power by its strong neighbors. But it stopped

¹ Martens, F. de, II, 197.

short of a guarantee of neutralization; in fact, it is doubtful ~~if~~ such a status as guaranteed neutrality had, at the time, been thought of. On the other hand, by guaranteeing the political constitution of the Polish state, it went farther than is now accepted as the sphere of the guarantor in treaties creating a permanent neutrality, since to guarantee the political constitution of a state is the equivalent of establishing a protectorate over it.

The Decree of the Diet of Ratisbon, of February 25, 1803, had for its object the territorial reorganization of Germany, at the time when Bonaparte's triumph on the Continent seemed complete. Conformably with the provisions of the Treaties of Campo-Formio and Lunéville, the French state was extended to include all of the territory on the left bank of the Rhine; and the Imperial Princes who were thus despoiled of their lands were, by the decisions of the Congress of Rastadt, to be indemnified through the secularization of ecclesiastical property in Germany.¹ The management of this readjustment was left to a special commission, but its workings were so dilatory that Bonaparte became impatient and interfered as mediator. Wishing to have the prestige of another power associated with him, he appealed to an old treaty between France and Russia in 1779, and, by masterful diplomacy and unlimited flattery, he influenced the Czar to act as co-mediator.²

On June 3, 1802, a project for the management of the territorial changes was drawn up, and this received the sanction of the Diet, forming in substance the Imperial Recess of February 25, 1803. It provided for a "College of Free Cities", the members of which should take no part in the future wars of the Empire, and should be perpetually free from all military contributions. The Empire assured their neutrality, as long as it should be respected by other belli-

¹ *C. M. H.*, IX, 92.

² *Ibid.*, 93.

gerents.¹ In history this recess is important as a step toward the consolidation of Germany, for by it the number of free cities was reduced from 50 to 6². Although these six were placed in a state of permanent neutrality, their status was not a matter of international guarantee, unless the guarantee of the numerous parts of which the Empire was at the time composed might be construed as an international guarantee; but this can hardly be admitted. Being, in law, the unilateral work of the representatives of the Holy Roman Empire, it can not be classified other than as an act of internal administration, and it had efficiency only as such, and among the members of the German Confederation. Although guaranteed permanent neutrality so far as the neighboring states of the Empire were concerned, the Free Cities had no surety as to the conduct of outside powers, in case the Empire should be involved in war; and the Empire itself was bound to observe this neutrality only so long as it was respected by other belligerents. Morand is right in declaring, "This neutrality has with permanent neutrality only the name in common".³

The first complete plan for the establishment of a formal permanent neutrality was embodied in the Treaty of Amiens, in 1802, and had its origin in the mutual distrust of France and England, the parties to that treaty. The Island of Malta, where the experiment was to be tried, had had a long and romantic history. It had been given, about the middle of the 16th century, to the semi-religious order of the Knights of St. John, by Charles V, Emperor of Germany.⁴ It remained in their hands for two hundred and

¹ Martens, F. de, II, 396; Garden, G. de, *Histoire générale des traités de paix, et autre transactions principales entre toutes les puissances de l'Europe depuis le paix de Westphalie*, (Paris, 1848-1859), VII, 369.

² C. M. H., IX, 94.

³ Morand, 528.

⁴ Ballou, M. M., *The Story of Malta*, (Boston and New York, 1893), 271.

sixty-eight years; but, in 1798, it was wrested from them by the French, and, by an order of Napoleon, issued in June of that year, the Knights were dispersed from Malta.¹ Four years later the British succeeded in capturing the island, and in the territorial readjustments incidental to the proposed peace, they felt that they could not return the island to France without endangering their own position in the Mediterranean. In their mutual distrust, both France and England sought to obtain the independence of Malta under the guarantee of a third power. England proposed placing it under the control of Russia, whose career of conquest to the south had then hardly begun, so that the British policy of checking Russian advances toward the Mediterranean was as yet unthought of. France, for obvious reasons, wished the island under the protection of the King of the Two Sicilies. In the preliminary treaty of peace, signed at London, October 1, 1801, it was stipulated that Malta should be placed under the guarantee and protection of a third power, which was to be designated by the definitive treaty.² The deadlock as to what power this should be continued. It was then proposed by the French that the fortress be dismantled, and the island virtually internationalized; but the rocky coast is in itself a mighty fortification, and the British thought that this step would be insufficient protection from French aggrandizement to warrant them in surrendering a stronghold already in their own possession.³ Bonaparte's next suggestion was that the island be neutralized under the guarantee of all the powers interested in maintaining the Order of the Knights of St. John, and this suggestion was adopted in the Treaty of Amiens.

After provisions were made for the retrocession of Malta

¹ Hardman, W., *The History of Malta during the Period of the French and English Occupations*, (London, 1909), 371f.

² Clerq, A. J. de, *Recueil des traités de la France*, (Paris, 1880 et seq.), I, 464.

³ Morand, 532.

to the Order, for the return of the Knights, for the removal of French and British influence, for British evacuation within three months after ratification, and for the protection of the interests of the native Maltese, the entire arrangement was placed under the protection and guarantee of Great Britain, France, Austria, Russia, Spain, and Prussia.¹ The perpetual neutrality of the Order and the island was then declared, and its ports were thrown open to the commerce and navigation of all nations. Inasmuch as the Knights had sworn eternal enmity to all Mohammedans, the Barbary States were excepted from the provisions of the treaty until the system of hostilities then existing should be terminated. The fortresses of the island were to be garrisoned by Sicilian troops, but these forces were to be removed after a period of one year, provided that the Knights had, by that time, raised a sufficient force to take their place.

It is doubtful if either France or England was sincere in making this arrangement. An unwillingness on the part of the British to evacuate was encouraged by the entreaties of the native Maltese, who went so far as to send a deputation to England to protest against the retrocession of the island to the Knights.² The powers hesitated to accept an arrangement whereby they were called upon to guarantee so unstable a thing. Austria was the only power to give free consent. Russia refused to be bound by an agreement, but submitted certain stipulations with regard to the management of the Order itself, (in which that power was especially interested, the Emperor, Paul I, having at one time been the Grand Master).³ The absorption of Switzerland by the French brought the delay to a close, for Great Britain demanded that Switzerland and Holland be evacuated by Bonaparte, before the British soldiers should be removed from Malta. A new dead-lock ensued, war again broke out,

¹ Hardman, 433.

² Hardman, 407f.

³ Garden, VII, 41f.

and Great Britain maintained military possession of the islands till 1814, when the Treaty of Paris gave her permanent sovereignty over them. Although the neutralizing arrangement never passed beyond the embryonic stage, it furnished a precedent which has been followed in the later cases of neutralization. It was a plan for an internationally guaranteed, permanent neutrality, and as such was a direct precursor of the neutralization of Switzerland and Cracow at Vienna.¹

See in France

We have seen how the germ of the permanent neutralization theory is to be found in the development of respect for neutral rights among the family of nations; and how certain international experiments paved the way for its acceptance as a part of the public law of Europe. Our last illustration will show how a people, by a consistent policy, followed for centuries, were prepared, not only to accept the status, but to apply it so successfully in their national life as to evoke the admiration of the world. We refer to the traditional neutral policy of the Swiss. Indeed, Swiss neutrality is no simple problem. It is rendered doubly complicated by the fact that until the adoption of the Constitution of 1848 the several cantons were held to be sovereign in their own territory, thus making concerted action by the Diet of the Confederation impossible,² and making it exceedingly difficult for the student of Swiss history to discover a policy which may be said to have been that of the state as a whole.

The Swiss state may be said to have its origin in 1291, when, out of the chaos of the collapse of feudalism, there developed a union of the three tiny divisions of Alpine peo-

¹ Morand, 535.

² Bury, S., *La neutralité suisse*, R. D. I., II, (1870), 637.

ples about Lake Lucerne.¹ These cantons, as they came to to be called, were Uri, Schwyz and Unterwalden; and this alliance is the germ of the Swiss Confederation. The purpose of the union was primarily mutual protection against external foes, particularly the Habsburgs. The battle of Brunnen, in 1315, made certain the freedom of the cantons from the power of Austria. Shortly afterward the Austrian city of Lucerne was annexed to the League, and the evolution of Switzerland from then on was a gradual drawing together of more and more valley communes and free cities around the original League.² Some of the added cantons maintained their own individuality; others were brought into subjection to one or more of the original members; while many diversities were manifest in the terms by which the several cantons were admitted. Each was permitted to form separate alliances with different cantons of the League, and considerable latitude was given in the matter of alliances with outside powers.

During the religious wars, anomalous as it may seem, the religious cleavage of the cantons proved to be Switzerland's salvation; for concerted action or general alliance with either the Catholic or Protestant party was impossible. Rather than divide their union the Swiss kept up a difficult neutrality; for it was obvious to thoughtful Swiss statesmen that to join in any way in the terrific struggles of the time must mean a division of the Confederation, and that such a division meant national suicide. Such were the circumstances from which evolved the much heralded traditional policy of Switzerland. It should not be concluded that such a policy was followed to the letter, or that the Swiss were united in its support. The latter part of the 15th, and the early part

¹ Dändliker, K., *A Short History of Switzerland*, (London and New York, 1899), 44; Hug. L., *Switzerland*, (London and New York, 1900), 119.

² Baumgartner, F. W., *The Neutralization of States*, in the *Bulletin of the Departments of History and Political and Economic Science of Queen's University*, (No. 25, July, 1917), 6.

of the 16th centuries witnessed a series of aggressive foreign wars, in which the armies of the Confederation were, on the whole, victorious over those of its neighbors. But such exertions were too much for the resources of the little country, and it was soon forced to sue for peace. The disastrous battle of Merignano, in 1516, marked the end of the important role played by Switzerland in European affairs.¹ The first official declaration of neutrality dates from thirty years later; but this neutrality results from the fact that "Switzerland had ceased to occupy a place among the great Powers, and had fallen to the position of a recruiting ground for French mercenaries."²

A word should be said about the practice of furnishing mercenary soldiers to fight in the armies of the surrounding powers. This practice was well-nigh universal among the small states up to the close of the 18th century. Judging from its popularity in Switzerland, the cantons found it a "moral equivalent for war", and by this means furnished an outlet for the surplus warlike propensities of its population. Authorities state that between 1474 and 1715 the Swiss sacrificed 700,000 men to France alone.³ When a state of the size of Switzerland was giving men at this rate to fight its neighbors' battles, it could well afford to be neutral at home; but a persistent question mark attaches itself to the eulogies of its admirers on the peace-loving character of its citizens. The Diet of the Confederation, realizing the evils to which the custom would lead, began to oppose it as soon as it assumed serious dimensions; but the power of this body was not sufficient to control the individual cantons, and it continued to protest in vain.

It is a singular fact that the right to hire out mercenaries by one state and to employ them by another was sanctioned by international law to a very recent date. Vattel, in his

¹ Dändliker, 116.

² *C. M. H.*, VI, 612.

³ *Ibid.*, 621.

"*Droit des gens*", says, "Let us see in what consists the impartiality which a neutral people ought to preserve. It relates exclusively to the war and comprises two things; not to give aid when not obliged to it; not to furnish without obligation either troops, arms, ammunition, or any thing which is of direct service for the war. . . . When a sovereign furnishes the moderate aid which he owes by virtue of an old defensive alliance, he does not associate himself with the war; he can, therefore, acquit himself of his debt and preserve an exact neutrality in other respects".¹ Furnishing a mercenary guard was not deemed incompatible with the regime of permanent neutrality, even in 1815. Louis XVIII and Charles X, the restored Bourbons of France, each had four regiments of Swiss guard. The Bourbons of Naples maintained themselves for a time on their unstable throne by the aid of Swiss mercenaries; and Pope Pius IX also had a Swiss guard. The last capitulation of this kind did not disappear until 1859, eleven years after the adoption of the new Swiss constitution.² Vattel's remark with regard to a neutral's not giving aid to a belligerent unless compelled to do so has direct reference to Swiss affairs; for the little state warded off many a danger by purchasing immunity with regiments of soldiers.³ "Thus" says Kleen, "a continual transgression of the duty of neutrality was the price of this pretended neutrality".⁴

During the Thirty Years' War while, as has been said, neutrality was adopted by the Diet as a national policy, the good intentions were only half carried out, inasmuch as that body had no power to enforce its orders, and the various cantons were for themselves a court of last resort.⁵ There

¹ Vattel, Quoted by Westlake, J., *International Law*, (2 vols., London, 1906), II, 202.

² Bury, 638.

³ Calonder, F. L., *Ein Beitrag zur Frage der Schweizerischen Neutralität*, (Zurich, 1890), 90.

⁴ Kleen, I, 70.

⁵ Dändliker, 165f.

were repeated violations of Swiss soil by both parties in the struggle, as well as serious threats of religious wars between the cantons. It was not until 1647, several years after hostilities had ceased, and but one before the definitive treaties of peace were signed, that the Diet passed the so-called "Defensional", by which an effective protection of the frontiers was to be assured by the organization of an army of 36,000 men.

When the representatives of the several powers met in Westphalia to conclude terms of peace, there was much delay and standing upon ceremony. One of the questions which had to be settled was whether Switzerland, which had remained professedly neutral in the war, should be given a place in the Congress. The Empire had never recognized the independence of the cantons, and consistently opposed giving them a voice in the proceedings. However, during the long delay caused by the protracted discussions of the terms of peace, repeated reverses of the Imperial arms rendered the Emperor, who had lost most of his allies, conciliatory toward Switzerland.¹ The French government had already solemnly recognized the autonomy of the Helvetic Confederation; and its representatives openly espoused the cause of the cantons in the Congress.² By the joint treaties of peace, signed in 1648, at Munster and Osnabruck, the European powers recognized the independence of Switzerland. At the same time the thirteen cantons formulated and openly proclaimed a declaration of perpetual neutrality toward all European peoples.

Yet they continued to send six thousand mercenaries to France, according to the terms of a treaty of 1521; and renewed alliances with that power continued to compromise Swiss professions of neutrality. In 1715, shortly before his death, Louis XIV succeeded in concluding with the Cath-

¹ Rott, Edouard, *La participation Helvétique aux traités de Westphalie*, R. H. D., XXVIII-XXIX, (1914-1915), 487.

² *Ibid.*, 490.

olic cantons of Switzerland, a treaty the terms of which were of such a nature as no relation of neutrality could allow. By it the King of France was made mediator in any dispute which might arise among the Catholics, or between the Catholics and the Protestants; and he was given the right to enforce his will. The King promised the restoration of Catholicism.¹ It was not, however, until alarm at the fate of Poland brought about a closer union of the cantons, that the Protestants were led to accept a new alliance with France. Subordination to a single power was preferable to dismemberment. This agreement was known as the "Treaty of Alliance between the Crown of France and the States of all Switzerland", and was concluded May 28, 1777. By it France gave up the right to act as mediator in cantonal disputes, but retained the right to raise recruits up to the number of 6,000 in Switzerland.² The alliance was concluded for fifty years, and was in force when the Helvetian Republic was set up in 1798, and Switzerland was brought still more completely under the yoke of France.

When, at the outbreak of the French Revolution, in 1789, a wave of sympathy swept over Switzerland, the autocratic governments of the cantons were successful in their policy of repression, and the government was left undisturbed until 1797, when the Directory violated Swiss territory. A highly centralized constitution was drawn up on the French model; and the latter power began a policy of shameless exploitation which reduced Switzerland virtually to a dependency. By it she was forced to keep 12,000 men in the French armies.³ A treaty of offensive and defensive alliance followed in 1798. In 1800 Bonaparte formally recognized the neutrality of Switzerland. Indeed, he might easily do so, since the neutrality was all in his favor. The Allied Powers naturally refused to recognize such a species of neutrali-

¹ *C. M. H.*, VI, 614.

² *Ibid.*, 616.

³ Baumgartner, 18.

zation. Switzerland was unable to defend her soil from invasion, had she made the attempt; and from 1799 to 1802 she became the battle ground of the War of the Second Coalition.

In 1803 a new government was set up, bringing the unfortunate Swiss still more under the control of Bonaparte. A "Defensive Alliance and Military Convention", accepted by this government, called upon the Confederation for 16,000 soldiers for Napoleon's armies. When the power of Bonaparte began to crumble, the Allies sent 150,000 men into Swiss territory, and drove out the French. A part of these forces remained in Switzerland until after the Congress of Vienna.

Such, in brief outline, is the history of Swiss neutrality prior to 1815. It will be perceived that the profession of neutrality was but badly lived up to by the Swiss, and still worse by the neighboring powers. Yet the people always cherished a sentiment for neutrality, and their Diet kept persistently proclaiming it. The ever abiding jealousies of the cantons prevented united action.¹ It is significant that from the beginning of the 17th century to the present day only once have Swiss banners been unfurled in war on foreign soil.² A comparison of her history prior to 1815 with that of the more than a century that has elapsed since that date will convince one that, by the action of the Congress of Vienna, Switzerland came into possession of something which made her international status far more stable than it had ever been before. Switzerland itself immediately abandoned the policy of forming alliances with outside powers; while the powers, regardless of any advantage which might accrue to them, have always avoided a violation of the neutrality established at Vienna. What was it

¹ Payen, *La neutralisation de la suisse, Annales de l'école libre des sciences politiques*, VII, (1892), 620.

² Swiss soldiers fought in Alsace during the Hundred Days following the return of Bonaparte from Elba.

that brought about this marked and almost sudden change? In the first place, it was the formulation of a definite policy on the part of the state itself. Secondly, it was the guarantee of seven powerful states that the neutrality should be respected.

The developing respect for the status of neutrality brought about an appreciation of it such that it came to be ardently sought after by the Swiss themselves. The plan of the Emperor Leopold to place the remnants of Poland under an international guarantee furnished a suggestion of common action by the powers; the permanent neutrality given by the Imperial Diet to the Free Cities of Germany gave a name for the transaction; the plan in detail was worked out in the Treaty of Amiens, only the provisions relating to local affairs needing alteration; while the professed desires of the Swiss had at last been brought into harmony with the desires of the powers.

CHAPTER II

THE CREATION OF THE PERMANENT NEUTRALITY OF SWITZERLAND

PERMANENT Neutrality, as an international status, was a creation of the Congress of Vienna. Two attempts to establish permanent neutralities were made by that body. One, that of the Polish city of Cracow, was, for reasons which we shall see later,¹ a failure; but the other, that of the Swiss Confederation, has undoubtedly taken a place among the permanent institutions of Europe. Such a status fitted well with the geographical situation of that country, and at the same time furnished the simplest means for curbing the jealous ambitions of the neighboring powers. "In all probability", says Phillimore, "the peculiarity of the position which Switzerland enjoys, the fact that she is hemmed in on all sides by states who have a direct interest in maintaining her neutrality, has been the cause why that neutrality has been unquestioned".²

Furthermore, the internal condition of the country in 1815 made the action of the powers more plausible than it could ever before have been. Bonaparte had centralized the Swiss government, and had placed the various cantons on an equal footing. Those which had, under the old regime, been subjected to the government of the leading members of the Confederation objected at Vienna to returning to the subordinate position from which they had been released; and they won their point.³ With the equalization of the influence of the cantons, the factions which

¹ V. p 68 *infra*.

² Phillimore, III, 227.

³ C. M. H., IX, 600.

had been Switzerland's curse for centuries died out, and a genuine policy of neutrality became a possibility. The release of the Confederation from French control made a reorganization under a new constitution a necessity;¹ while the utter disorganization of Europe made certain that the powers that had humbled Napoleon would have the destiny of Switzerland at their disposal.

Certain events prior to the meeting of the Congress presaged well. The Treaty of Chaumont, of March 1, 1814, closed with a secret article by which it was stipulated that the Swiss Confederation should be established in its old borders, and that its independence should be placed under the guarantee of the Great Powers.² By the terms of the ✓ Treaty of Paris, of the 30th of the following May, France acceded to this agreement.³ The same treaty provided for the calling of a Congress to remake the map of Europe, at which all of the European states should be represented, with the exception of Turkey, which had not at that time been admitted to the family of nations.⁴ The Diet of the Swiss Confederation sent three representatives, while nearly all of the nineteen cantons had one or more agents present, looking after their own special interests.⁵ One of these, Pictet de Rochemont, the delegate of Geneva, played a very important part in the proceedings.⁶

There was, however, during the earlier sessions of the Congress, serious discussion as to what should be done with the Swiss territory. Heilmann, the representative of Bienne, wrote his father,⁷ as late as December 13, that af-

¹ Dändliker, 238.

² Payen, 631.

³ Weil, M. H., *Les dessous du Congrès de Vienne*, (2 vols., Paris, 1917), I, 565.

⁴ C. M. H. IX, 576.

⁵ *Ibid.*, 600.

⁶ See the interesting work by E. Pictet, entitled *La biographie de C. Pictet de Rochemont*, (Geneva, 1892).

⁷ Letter given in Weil, I, 675.

fairs had only recently turned in their favor; and that even then he doubted if the Higher Powers would hesitate to sacrifice the Confederation, if their own interests led them to do so. He declared that there were no less than five different plans under consideration. Among them were proposals to give Saxony to Prussia, Baden to the Duke of Saxony, and Switzerland to the Grand-Duke of Baden; to cut Switzerland up piece-meal, and divide it among various members of the German Confederation; and to give it a Vice-King, and make it a protectorate of one of the Great Powers.

But several interests were working in favor of the Swiss. Czar Alexander, of Russia, under the influence of his former tutor, Cesar la Harpe, was inclined to champion the rights of the Swiss people, and pledged his honor that there should be no interference with their country or their institutions.¹ Tallyrand, the French plenipotentiary, adopted, as his policy, an attitude of friendship toward the smaller powers, and early won the confidence of the Swiss delegates.² It was due to his influence that a French representative was admitted to the Committee on Swiss Affairs, which had been given special charge of the problem.³

The matter of internal reorganization under a working constitution was one of particular importance. The fall of the French monarchy made a new constitution necessary, but the Swiss made it known that they would never accept one imposed upon them by the Congress.⁴ A plan in the form of memoirs from the Swiss deputies was submitted at the first session of the Committee on Swiss Affairs, November 15, 1814, with the request that the powers also confirm the neutrality of Switzerland.⁵ Suggestions of changes

¹ Well, I, 565.

² *Ibid.*, 260.

³ *Ibid.*, 653; *C. M. H.*, IX, 601.

⁴ Well, I, 388.

⁵ *Ibid.*, 606f; Chodzko, J. L., *Compte d' Angelberg, Le Congrès de Vienne et les traités de 1815*, (4 vols., Paris, 1864). I, 430.

X in the plan, often prompted by their own selfish interests, were not wanting on the part of the powers. For instance, one of the terms of reconstruction proposed by the Court of Vienna was that Switzerland should accord to all the powers the right to enlist soldiers in its territory.¹ This would have perpetuated the wretched mercenary system in its worst form, and would have rendered Swiss neutralization a farce from the outset.

Proceedings dragged on slowly till, on March 7, word came to Vienna that Bonaparte had escaped from Elba, and was again in France. A positive course of action suddenly became a necessity, and a Declaration of the Eight Powers on the Affairs of Switzerland was signed March 20, 1815.² The Declaration acknowledged that the general interest of Europe demanded that the Helvetic States should enjoy the benefit of a perpetual neutrality; and declared that, as soon as the Helvetic Diet should accede to the plans promulgated in the Declaration, an act should be prepared, containing the acknowledgement and the guarantee, on the part of all the Powers, of the perpetual neutrality of Switzerland in her new frontiers.

The Diet of the Confederation, by a Declaration made on May 27, expressed "the eternal gratitude of the Swiss nation toward the High Powers which, by the proclamation of March 20, have solemnly promised to recognize and guarantee in favor of the Helvetic Confederation, the permanent neutrality which the general interests of Europe demands."³

In this Declaration of March 20, 1814, is found the key of the whole matter of the disposal of the Swiss problem. The powers were prompted by a single motive; and that motive was to erect, out of the remnants of the old Con-

¹ Weil, II, 244.

² Hertslet, E., *Map of Europe by Treaty*, (4 vols., London, 1875). I, 64; Chodzko, III, 934.

³ Hertslet, I, 171.

federation, a barrier state of sufficient strength to prevent any encroachments which France might be tempted to make in that direction. But since the Confederation in its own strength could never hope to be strong enough to cope with the French armies, the powers bound themselves to cause its neutrality to be respected, feeling doubtless that the moral weight of this guarantee would be sufficient to accomplish the purposes for which it was given, without recourse to arms. The continual alliance of the old Confederation with France, and its ultimate subjection to that power for a period of fifteen years, made the Allies suspicious of Swiss professions of a desire for permanent neutrality. Evidence of this distrust is found in the report presented to the Congress by the Committee on Swiss Affairs, on January 5, 1815, which reads in part as follows:

"The Allied Powers engage to recognize from the time of the general peace the permanent neutrality of the Helvetic Confederation, . . . but they shall consider this engagement as binding only as soon as the Swiss, in return for the advantages hereby reserved for them, shall offer to Europe, as well by the cantonal institutions as by the nature of its federative system, a sufficient guarantee of the capacity of its new constitution to maintain interior tranquillity and to compel respect for the neutrality of its territory."¹

From the tone of this report it is obvious that the powers had learned from the history of the preceeding centuries that a mere unilateral declaration of permanent neutrality on the part of Switzerland was insufficient to insure the integrity of its soil. Taking their cue from the Anglo-French scheme for the neutralization of Malta, in 1802, they developed the idea of binding themselves to observe, and to cause to be observed, the profession of neutrality which the Swiss had been making for two centuries. The policy was rendered more effective by the fact that France was willing to become a co-guarantor. Hence, permanent neutralization was the logical solution of the whole problem.

¹ Chodzko, II, 619.

"The conclusion is," says Nys, "that neither generosity, nor yet the elementary sentiment of justice, inspired the states guaranteeing the neutrality of Switzerland, Belgium and Luxemburg; but that these events came about for the single purpose of giving satisfaction to their ambitions, and to their mutual jealousy."¹ Whatever the wishes of the Swiss may have been, the powers were in little mood to regard them. If the Swiss had not wished the status of neutrality it would have made no difference; for that status would, undoubtedly, have been imposed upon them.² In order to render Switzerland more immune from outside aggressions, its borders were extended to points which gave splendid opportunities for military defense, so that the Confederation consisted of twenty-two cantons, instead of the nineteen of which it was composed in 1798; and Chaublais and Faucigny, parts of Savoy through which approach to the heart of Switzerland was possible, were also neutralized and permission was given for the maintenance of Swiss garrisons in these sections in case of threatened invasion.³

But Swiss neutrality, in spite of all the early declarations of the powers, was destined to undergo rough treatment at their hands, even before the close of the Congress. On May 6, 1815, the powers addressed a note to the Swiss government, asking it to join the coalition against Bonaparte. The note warned the Confederation that its welfare, neutrality and independence would always be jeopardized and exposed to attacks, so long as Bonaparte remained in power in France. They declared that they appreciated the value which Switzerland placed on the maintenance of its neutrality; and that it was not to do it injury, but solely to hasten the time when this principle could be applied in an advantageous and permanent manner that they proposed to the Confederation to take energetic measures,

¹ Nys, Ernest, *Notes sur la neutralité*, R. D. I., XXXI, (1900), 587.

² *Ibid*, 591.

³ Herttalet, I, 262.

which should be proportionate to the needs of the time, without, however, bearing any consequences for the future.

At first the Diet declared for the observance of the strict neutrality which the Allies had agreed to respect; but a little later Switzerland acceded to the Coalition, and granted passage to the Allies through its territories.¹ Thus the permanent neutrality of Switzerland was pledged by the powers on March 20, violated by them in May of the same year, and re-pledged November 20. "The neutrality of Switzerland," says Milovanowitch, "was violated before being definitely sanctioned, by the guaranteeing powers themselves; truly a bad omen for the future."² An effort was made to efface any bad impression which might have been produced by this precedent by a new Declaration of November 20, 1815, that

"No inference unfavorable to the rights of Switzerland relative to its neutrality, and the inviolability of its soil, should be drawn from the events which brought about the passage of the Allied troops over Helvetian soil. This passage, freely consented to by the cantons, in a convention of May 20, was the necessary result of the free adhering of Switzerland to the principles manifested by the Signatory Powers to the Treaty of Alliance of March 25."³

The Declaration of the Powers of November 20, 1815,⁴ again formally recognized the permanent neutrality of Switzerland. It is on the wording of the paragraph containing this acknowledgment that Dr. Schweizer bases an argument that the neutrality of Switzerland was not guaranteed by the powers.⁵ The section in question reads as follows:

"The powers who signed the Declaration of Vienna of March 20 declare, by this present act, their formal and authentic acknowl-

¹ Chodzko, III, 1207.

² Milovanowitch, 153.

³ Hertslet, I, 370; Chodzko, IV, 1640.

⁵ Schweizer, P., *Geschichte der Schweizerischen Neutralität*, (Frauenfeld, 1894), 595ff.

edgment of the perpetual neutrality of Switzerland; and they guarantee to that country the integrity and inviolability of its territory in its new limits, such as they are fixed, as well by the Act of the Congress of Vienna, as by the Treaty of Paris of this day, and such as they will be hereafter."¹

From this Dr. Schweizer draws the conclusion that the neutrality was merely acknowledged, while the integrity and inviolability of territory was guaranteed. But all preceeding documents had expressly guaranteed the neutrality; and the Treaty of Paris, here referred to, makes no mention of a modification of the guarantee. On the contrary, Article XI of that treaty stipulates that

"The Treaty of Paris of May 30, 1814, and the Final Act of the Congress of Vienna of June 9, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not be modified by the Articles of the present Treaty."²

It is hard indeed for an unprejudiced student to conceive that the powers, while using such language, had any idea of altering their proposed guarantee, and we are led to conclude that Dr. Schweizer, in his desire to free his native country from any trammels which might be placed on its sovereignty by its international position of guaranteed neutrality, has caught at a straw. The guarantee is clear and precise in every document in which reference to the Swiss problem is made, with the single exception of the Final Act of the Congress of Vienna; and no diplomat had, at the time, any idea of contesting its validity. "There was nothing lacking in the guarantees which the powers made to Switzerland," says Kleen.³ At the best Schweizer made but a fine-drawn, technical distinction, which could have no weight in fact. This is the view taken by Alphonse Rivier,⁴

¹ Hertslet, I, 370.

² *Ibid.*, 349.

³ Kleen, I, 90.

⁴ Rivier, A., *Review of Geschichte der Schweizerischen Neutralität*, R. D. I., XXX, (1899), 399.

who reviewed the book upon its first appearance; and Piccioni¹ Richter², and a host of less famous writers have followed him.

¹ Piccioni, *Essai sur la neutralité perpétuelle*, (Paris, 1902), 11.

² Richter, K., *Der Neutralisation von Staaten*, 54ff.

CHAPTER III

THE CREATION OF THE PERMANENT NEUTRALITY OF BELGIUM

PRIOR to 1830 Belgium had never been an independent state, and to the casual observer its existence as a political division of Europe seems almost paradoxical. Its divisions are more easily discernible than its unity.¹ It has ever been surrounded by greedy neighbors who have, one by one, attempted to absorb it. "If there is one truth which is demonstrated by history," says an eminent Belgian author, "it is that the Belgians have refused to be blended with any foreign people. United to Spain, they did not become Spaniards; bound to Austria, they did not become Austrians; conquered by France, they did not become French; given to Holland as an increase of territory, they did not become Dutch. Belgium has never been a fortunate possession in the hands of foreign powers; she demands the right to live her own life."² "Spain never could succeed in rendering the Belgians Spaniards," said another Belgian publicist; "nor could Austria convert them into Austrians, nor France metamorphose them into French, nor Holland transform them into Dutch."³ "Belgium cannot perish," declared again this enthusiastic patriot, Baron J.-B. Nothomb, in a discourse before the General Committee of the House of Representatives, on October 26, 1831, "because it is a law for Europe

¹ Nothomb, Pierre, *La barrière Belge*, (Paris, 1916), 14.

² Woeste, Charles, *La neutralité Belgique*, (Brussels, 1891), 14.

³ Nothomb, J.-B., *Essai historique et politique sur la révolution Belgique*. Quoted in White, Chas., *The Belgic Revolution of 1830*, (2 vols., London, 1835), I. 3.

that she should not perish.”¹ And Pierre Nothomb explains the necessity to the Great Powers of Europe of the existence of the Belgian state. “Economically it is an international clearing house; politically, a field of experience; militarily, a barrier; and intellectually, an interpreter.”²

While Belgium's status as a permanent neutral was not its own creation, nor yet the result of the free choice of the Belgian nation,³ the history of the territory comprising the southern part of the old Low Countries had for centuries been such as to render neutralization a plausible solution for its disposal. It was in harmony with the policy of erecting a barrier between France and Germany; a policy which had been in vogue since the Treaty of Verdun, of 843, when, upon the disruption of the Empire of Charlemagne, a narrow strip of territory, reaching from the North Sea through Italy, was given, with the title of Emperor, to Lothair, thereby separating the lands of Louis the German from those of Charles the Bald of France.

Later the region of the Low Countries was assimilated as a part of the hereditary estates of the Dukes of Burgundy, and by the marriage of Mary, the heiress of that house with the future Emperor, the title of Duke of Burgundy was transferred to the Hapsburg family. From this a confusion frequently arises, for the Netherlands never were an integral part of the Empire, but were merely joined to it in the relation which is known in international law as a Personal Union.⁴ The first suggestion of establishing the neutrality of the Netherlands came at the time of Charles the Fifth⁵. The proposal came from Mary of Hungary, the

¹ Quoted in Nothomb, P., *op. cit.*, Introduction.

² *Ibid.*, 15.

³ Woeste, 18.

⁴ Descamps, Edouard, *La neutralité de la Belgique*, (Brussels and Paris, 1902), 14.

⁵ Dollot, R., *Les origines de la neutralité de la Belge et le système de la barrière*, (Paris, 1902), 12f.

Emperor's sister; but it fitted in poorly with Charles' ambitious schemes, and failed to receive his support. When Charles abdicated the Belgian territories passed to his son Philip, and were then joined in Personal Union to Spain.

A century later Cardinal Richelieu, the French Minister, in accord with his policy of checking the Hapsburgs, proposed an independent and permanently neutral kingdom of Belgium;¹ but Spanish forces were in the Low Countries in such numbers that the Belgians would not participate in the desired revolt. Mazarin, Richelieu's successor, took up the plan, and, in 1658, entered into fresh negotiations to establish such a kingdom.² But the Dutch at this time had a strangle hold on Belgian development by their control of the Scheldt River, which had been closed by the terms of the Treaty of Munster, in 1648. Thus the city of Antwerp had been well-nigh ruined, while all of the commerce of the time went through the Dutch cities at the mouth of the river.³ An independent Belgium would necessarily mean a free river, and to this the Dutch would not agree; and again the proposal met with no permanent results.

In 1715 the French government for a third time presented a memoir to Holland proposing joint action in establishing between them a new state with a status of permanent neutrality.⁴ But Holland had now the advantage of garrisoned forts along the French border within the territory in question, in addition to its commercial interests which it guarded jealously, and hence again peremptorily ~~refused~~ refused to accede. By the Treaty of Utrecht, which, in 1713, closed the War of the Spanish Succession, the Spanish Netherlands were ceded to Austria; and from that time until the French Revolution they were known as the Austrian

¹ Van der Essen, Leon, *A Short History of Belgium*, (Chicago, 1916), 146.

² Dollot, 119f.

³ Nothomb, P. 78f.

⁴ Dollot, 412.

Netherlands. Their union with the Empire was, however, still purely personal.

When the French occupied Belgium in 1793, great consternation arose in England;¹ for the latter power had made its continental headquarters at Bruges since the fall of Calais in the 16th century.² It soon became apparent that the Island Empire would play an important part in the settlement of Continental affairs, particularly as far as the disposal of the lands opposite its shores was concerned. When, in 1813, the Empire of Napoleon began to crumble, the Allies, confident of success, set themselves to work evolving plans for the reconstruction of Europe. Austria intimated that it had no desire to renew its claims to the Netherlands. Consequently the field was left open for British genius to work out a solution of the problem; and her statesmen now embraced the old proposition of Richelieu,³ but with the purpose of forming a barrier state against France. Castlereagh became the chief sponsor for the plan. The Prince of Orange had recently been restored to power in Holland, and, upon his recognition by the Allies, had been promised an increase of territory.⁴ Not only was the scheme to unite Holland and Belgium acceptable to Great Britain as forming a barrier to French aggression, but also because it would recompense Holland for the colonies which had fallen into the hands of England while the Dutch were allied with Napoleon. On July 21, 1814, the Prince of Orange signified to the powers his acceptance of the sovereignty of the Belgic Provinces,⁵ and on May 31, 1815, the treaty which placed Belgium and Luxemburg under his government was concluded between him and the Four Al-

¹ Van der Essen, 148.

² Nothomb, P., 53.

³ *C. M. H.*, IX, 605.

⁴ *Ibid.*, 606.

⁵ Hertslet, I, 37f.

lied Powers.¹ Luxemburg was still a Grand Duchy of the German Confederation,² but the "fusion of the two larger states" was intended to be complete.³ The Scheldt was opened for navigation, thus giving Belgian trade an opportunity for unrestricted development. But Prussia set herself to block the extension of the new state on the east, and several towns claimed by the Dutch and Belgians were incorporated in the Confederation. Thus a check was once more put upon the fullest development of the Netherlands; and "as the Treaty of Munster had stifled Belgium on the coast, so that of Vienna did on the east."⁴

In order to render the territory of the new state doubly sure against French aggressions the Four Allied Powers forced, in the Congress of Aix-la-chapelle, in 1818, upon its government a military protocol, by the terms of which "a certain number of the fortresses of the Low Countries should receive English and Prussian garrisons."⁵ In addition the King received sixty million francs of the indemnity money from France, to be applied to the construction and repair of the barrier fortresses.

The union of the two Netherlands was destined to a short and troubled existence. It had been the promise of the Allies before 1814 that they would establish the independence of all the countries opposed by France.⁶ Many Belgians felt that this promise had been broken, since they were united to Holland, under a Dutch Prince; and solely for European interests. Radical differences also manifested themselves between the two people; and these, coupled by the blind and headstrong policy of the King, rendered Belgium rife with dissatisfaction. Consequently, when in July,

¹ *Ibid.*, 179f.

² *Ibid.*, 250f.

³ *Ibid.*, 40.

⁴ Nothomb, P., 147.

⁵ Chodzko, IV, 1746f.

⁶ See the Convention of Reichenbach, June 14, 1813, in *British and Foreign State Papers*, I, Part I, 58.

1830, a revolution broke out in Paris, which overthrew the Bourbon monarchy, conditions were favorable for a similar movement in Brussels; and it was not slow in coming.

There was fighting in the streets of Brussels in September of that year, and the Dutch government was soon overthrown. William appealed for help to the powers which had guaranteed his position. A Conference met at London, November 4, 1830, to settle the matter. The Five Great Powers and the Low Countries were represented. An early protocol declared the union between Belgium and Holland dissolved, and directed the former government to send commissioners with full powers to London.¹ A protocol of January 20, 1831, first expresses the determination to neutralize the Belgian territory; and it serves as a basis for all the treaty arrangements which followed.² It contains eight articles, numbers I, II, and IV of which relate to the boundaries of the new state, number III to the free navigation of the Scheldt and other rivers which cross Belgian territory. The other four articles follow:

"V. Belgium, in the limits as described conformably to the arrangements made in Articles I, II, and IV of the present protocol, shall form a permanently neutral state. The Five Powers shall guarantee this permanent neutrality, as well as the integrity and inviolability of its territory within the limits mentioned above.

VI. By a joint reciprocity Belgium shall be bound to observe this same neutrality toward all other states, and to disturb in no way their internal or external tranquillity.

VII. The Plenipotentiaries shall without delay draw up the general principles of the arrangements of the finances, commerce, etc., which are demanded by the separation of Belgium from Holland. As soon as these principles are made acceptable, the present protocol thus completed, shall be converted into a definitive treaty, and communicated in that form to all the Courts of Europe, with the invitation to accede thereto.

VIII. When the arrangements relative to Belgium shall be com-

¹ *Protocols of the Conference of London relative to the Affairs of Belgium, 1830-1832*, (London, 1832), 30.

² *Ibid.*, 34.

pleted, the Five Courts reserve to themselves the right to investigate, without prejudice to the rights of third powers, the question whether there is any means of extending to neighboring countries the benefit of the neutrality guaranteed to Belgium."

One of the most difficult problems which confronted the Conference was the choice of a King for the new country. There was, in Belgium, a large party in favor of annexation to France; and, while many knew this to be impossible because of the objections of the other powers, it was still hoped that a close alliance with that country might be brought about by naming the Duke of Nemours, Louis Philippe's younger son, as the Belgian King. But this plan was also distasteful to the powers; and, under pressure from Great Britain, Louis Philippe made it known to the Belgians that he could not permit his son to become their King.¹ There was also considerable talk of electing the Duke of Leuchtenberg, a son of Eugene Beauharnais, but he, too, failed to gain the support of the powers.² The matter was finally settled by the choice of Prince Leopold, of Saxe-Coburg-Gotha. This gentleman was a German by birth. He was the widower of Princess Charlotte of England; and he had spent so many years in England that he was regarded almost as an English Prince.³ On the other hand, negotiations were immediately set on foot to bring about his marriage with Princess Louise, of Orleans, the daughter of Louis Philippe, thereby winning the French to the support of his candidacy.⁴

A preliminary treaty was drawn up on June 26, 1831. It is commonly known as the Treaty of the XVIII Articles.⁵ Articles IX and X are a reproduction of V and VI of the protocol of January 20, with the addition of the clause, "without wishing to interfere in the internal affairs of Belgium," inserted in the former, and, "constantly retaining

¹ Protocols, etc., 54.

² *Ibid.*, 58.

³ *C. M. H.*, IX.

⁴ Van der Essen, 155f.

⁵ Protocols, etc., 85.

the right to defend herself against foreign aggression," added to the latter.¹ Thus it became evident that the powers were anxious not to impose any restrictions upon Belgian sovereignty, other than those absolutely necessary to render that country permanently neutral. The treaty was accepted by the Belgian Congress; but the Dutch government, being highly dissatisfied with an arrangement which took from it over half of its territory, refused to accept, and began hostilities anew.² Finding himself in sore straits, the Belgian King appealed to the powers which had become the guarantors of his neutrality by the Treaty of XVIII Articles; and French troops, which had been mobilized some time before, hurried to the rescue.³ Having quickly driven the Dutch from the Belgian territory, with the exception of their occupation of the city of Antwerp, the French withdrew, and negotiations continued in London.

On October 14 another treaty, known as that of the XXIV Articles, was signed by the plenipotentiaries. The arrangements for permanent neutrality were condensed into a single article, number VII, which reads

"Belgium, within the limits indicated in Articles I, II, and IV, shall form an independent and perpetually neutral state. It shall be required to observe such neutrality toward all other states."⁴

This treaty was, in turn, accepted by the Belgian Congress, and a twenty-fifth Article was added, giving Belgium the guarantee of the Five Powers for the maintenance of the whole arrangement. "The Courts of Great Britain, Austria, France, Prussia and Russia guarantee to His Majesty, the King of the Belgians, the execution of all the preceeding Articles."⁵ The Dutch government again re-

¹ *Ibid.*, 84.

² White, Charles, II, 299.

³ *Ibid.*, 324.

⁴ Protocols, etc., 176.

⁵ Hertzslet, II, 870.

fused to accept the treaty; and it was, to some extent, encouraged by the attitude of the reactionary governments in Austria, Russia and Prussia.¹ The English and French however, were determined to enforce the XXIV Articles; and, in May, 1832, they entered into a formal agreement to compel Holland to acquiesce in the terms of that treaty.² An embargo was actually levied on all Dutch ships within the waters of England and France; while the Dutch were given until November 15 to evacuate all Belgian territories.

Should the Dutch still refuse, resort was again to be had to the French troops; and, by a Convention between France and Belgium, on November 10, five days before the expiration of the ultimatum to the Dutch, permission was given by the government at Brussels for the French troops to enter Belgian territory.³ Not wishing to repeat the experiences of the preceeding year, the Dutch capitulated, and, on May 21, 1833, a Convention restoring friendly relations between France and Great Britain and Holland was signed at London.⁴

(The Dutch King, however, stubbornly refused to accept the terms of the XXIV Articles until March 14, 1838. On that date he signified to the powers his willingness to accept the treaty. The Conference of London, which had been dissolved in October, 1832, was again summoned; and December 6, 1838, signed a protocol declaring itself in favor of strict adherence to the terms of the XXIV Articles. Now the tables were turned, for the Dutch King was willing to accept, while the Belgians were loath to give up their hold on Luxemburg, which they had held since 1832 on account of William's refusal to accede to the demands of the powers. On January 23, 1839, the Conference of London revived the Treaty of November 20, 1831, with a few modifications.

¹ Milovanowitch, 190.

² Hertaleet, II, 909f.

³ *Ibid.*, 915.

⁴ *Ibid.*, 921.

William readily assented, and, after some stormy sessions, the Belgian Congress gave its adhesion. On April 19 three treaties were signed at London; one between the powers and Belgium, a second between the powers and Holland, and the third between Belgium and Holland. These treaties form the final basis of separation of the two countries, and, except for the matter of the debt, their purport is identical with the arrangements of 1831. Article I of the treaty between Belgium and the powers guaranteed the enforcement of the XXIV Articles, and they were, accordingly, annexed verbatim to the treaty.¹ By the treaty between Holland and Belgium, the former adhered to the XXIV Articles, but did not take upon itself to guarantee them.² Holland is thus bound to respect the neutrality of Belgium, but not to cause it to be respected.

As in 1815, so in 1839, the British plan for the solution of the Belgian problem prevailed. In 1815, however, England was at odds with France, and its motive was to erect as powerful a barrier as possible against that power. In 1839 England and France had been drawn together to some extent by the continued opposition of the conservative governments of Austria, Prussia and Russia; and the establishment of the permanent neutrality of Belgium was designed to be as much a safeguard against aggressions from the east as against those of France. In short, the maintenance of the Barrier System had broadened into the maintenance of the Balance of Power in Europe.

¹ Hertslet, II, 996ff.

² *Ibid.*, 994f.

CHAPTER IV

THE CREATION OF THE PERMANENT NEUTRALITY OF LUXEMBURG

THE history of Luxemburg prior to 1814 is identical with that of Belgium, of which it formed a part. When the House of Orange-Nassau was restored to the throne of Holland in 1814, their hereditary estates in Germany were taken from them; but the Grand Duchy of Luxemburg was given them in compensation.¹ By a Convention of November 8, 1816, between the Netherlands and Prussia, an agreement was reached by which the garrison of the fortress of Luxemburg was to be one-fourth Dutch and three-fourths Prussian; and the Prussians were given the right to appoint the commandant of the troops.²

Thus, while Belgium was given to Holland outright as an increase of territory, with the expressed desire that the two peoples might be amalgamated into one, Luxemburg was placed in a far more anomalous position. It was joined to the Kingdom of the Netherlands, with their King as its Grand Duke; but it had no distinct administration.³ At the same time, it was a member of the German Confederation, and its sovereign, as such, was a German Prince. To complicate its position still farther, Prussia, one of the states of the Confederation, was privileged to maintain a garrison of soldiers in the only strong position of which the little Duchy could boast. The arrangement becomes intelligible only when we call to mind the purpose of the whole transaction, which was to form a bulwark against France. It was felt by all the powers that a Prussian garrison in the stronghold

¹ Hertslet, I, 179ff.

² *Ibid.*, 486; Martens, *Nouveau Recueil*, IV, 269.

³ Servais, E., *Le Grand-Duché de Luxembourg et le traité de Londres*, (Paris, 1879), 6.

of Luxemburg would have a powerful influence in restraining the French from encroachments in that direction.

With the exception of the citadel, which was under the control of the Prussians, Luxemburg joined heartily in the revolt of 1831 against the rule of the Dutch. The Grand Duchy remained, as we have seen, under Belgian control during the eight years that King William was making up his mind to accept the terms of the separation. These years were particularly happy and prosperous ones for the little state; and it was with bitter regret, both on its part and that of Belgium, that they found themselves separated once more, by the terms of the Treaty of 1839.¹ During the period from 1815 to 1839 Luxemburg had no affiliations with the German Confederation, other than those relating to the Prussian occupation of the fortress, and the empty form of publishing the decisions of the Diet in the local papers.²

When, in 1839, King William decided to accept the terms of the powers and the separation of the kingdoms as a *fait accompli*, Luxemburg was subjected to its last and greatest mutilation. A division had already been made, owing to the fact that but part of its people had taken part in the revolt. Hence the city, with its environments, was confirmed to the House of Nassau, while the rest of the Duchy was united to Belgium. While getting the larger part of the territory, Belgium received somewhat less than half of the population.³ Inasmuch as the Belgian part of Luxemburg passed now from the sovereignty of the Confederation, it was thought necessary that the latter, as well as the Dutch King, should be reimbursed. Hence a portion of Limburg, bordering Holland, was taken from Belgium and placed under William's sovereignty, being at the same time accepted as a part of the Confederation. The new Grand

¹ See the chapter entitled *Histoire Belge de Grand-Duché de Luxembourg*, in P. Nothomb's *La barrière Belge*.

² Servais, 7.

³ Wampach, G., *Le Luxembourg neutre*, (Paris, 1900), 41.

Duchy, while still retaining its place in the Confederation, was joined to Holland in Personal Union under the House of Nassau.

The treaty of April 19 gave the guarantee of the powers to the new territorial arrangements made in the Low Countries,¹ and they were accepted by the German Confederation, by a treaty signed at London on the same day.² Hence, the integrity of Luxemburg, within the Confederation, was guaranteed by the powers at this time. Certain authors go so far as to hold that this guarantee extended to the neutrality of Luxemburg. "The test by which the European powers guaranteed the existence of Belgium, which was declared neutral at the same time," says Paul Eychen, "is identical for both states,—for Belgium and Luxemburg."³ But it is extremely doubtful if, in law, the guarantee, so far as Luxemburg is concerned, could be extended beyond the matter of territorial inviolability.⁴

After 1839 Luxemburg was given a distinct administration, and was governed as a separate state. The period was one of development for the Grand Duchy. When the revolutionary movement of 1848 shook Europe, a new constitution was promulgated, by which the separation of the Duchy from Holland may be said to have been complete, with the exception of the Personal Union under the same sovereign, and the fact that Luxemburg and Limburg were represented in the Diet at Frankfort by the same minister, who received his instructions by agreement between the two interested governments. By a treaty of February 8, 1842, Luxemburg was admitted to the Zollverein of the German Confederation, thereby gaining considerable advantages for its internal development;⁵ and by a treaty of February 17,

¹ Hertslet, II, 996ff.

² *Ibid.*, 999; *State Papers*, XXVII, 1002.

³ Eyschen, P., *La position du Luxembourg selon le droit des gens*, R. D. I., XXXI, (1899), 7.

⁴ Descamps, Em., 65.

⁵ *State Papers*, XXXI, 1352.

1856, Holland gave up its right to supply the one-fourth of the soldiers of the fortress, the garrison of which thus became wholly Prussian.

When Prussia, under the leadership of Bismarck, started on its career which was destined to break up the German Confederation, and eventually to result in the unification of Germany under its own hegemony, Luxemburg drew aloof. It refused to take any part in the proceedings against Denmark in 1863¹; and when, in 1866, the war between Prussia and Austria broke up the old Confederation, the Grand Duke refused to enter the new Confederation of North Germany.

The future of Luxemburg now became a matter of interest to the powers; especially so since Bismarck, while seeking to insure a clear field for his designs against Austria, had suggested to Louis Napoleon that the union of Luxemburg to France might be one of the prizes which the latter state could gain as a reward for neutrality in the struggle which was about to convulse Germany.² To this agreement the Dutch government was willing to accede, provided that, in exchange, Limburg should be declared free from all bonds which bound it to the Confederation. But when the brief struggle between Prussia and Austria was over, and Bismarck no longer felt the need of French good will, he declared it his intention to refer the matter to the powers which had signed the Treaty of 1839. Meanwhile, the Confederation of which Luxemburg had been a member was dissolved; but in spite of this fact the Prussian garrison was still kept in the fortress.

It is certain that Bismarck stood on firm legal ground when he sought to bring the question of Luxemburg before the powers which had guaranteed the Treaty of 1839. The signers of that treaty could not fail to be interested in the new arrangements, of whatever nature they might be.

¹ Servais, 17, 21.

² *Ibid.*, 40.

Furthermore, since the fortress was maintained by the French indemnity money, it might be looked upon as a sort of international investment. The Grand Duke, who had intimated his willingness to cede the Duchy to France under certain conditions, was anxious that the powers should be consulted before definite arrangements were made; but Louis Napoleon wished the deal to be kept secret until he should himself judge the time opportune to make it known.¹

With war imminent between France and Prussia, the guaranteeing powers felt called upon to effect a peaceful settlement. Count Beust, the Austrian minister, took the initiative. He proposed that the fortress be demolished and the Grand Duchy neutralized. As an alternate proposition he suggested that the Duchy might be ceded to Belgium, who should, in turn, recede to France the towns of Philippeville and Marienbourg, thereby rectifying the old frontier between the two states. The Belgian government promptly refused the latter proposal, and the French Emperor did not press the matter.² Bismarck would not commit his government, but declared for the *status quo*.³ The Austrian Chancellor would not be foiled. He called upon the Courts of London and St. Petersburg to join in the appeal to the Court of Berlin for a peaceful solution of the problem, and these Courts now joined actively in urging the Prussians to evacuate the fortress.⁴ Gortchakoff, the Russian Chancellor, suggested the meeting of a Conference at London to settle the whole question, and included the suggestion that the Grand Duchy be neutralized, and placed under the guarantee of Europe.⁵ There was much hesitation and delay on the part of Prussia, Bismarck finally accepting only after

¹ *Ibid.*, 77.

² *Ibid.*, 125.

³ *Ibid.*, 129.

⁴ *Ibid.*, 132.

⁵ *Ibid.*, 133.

the French had bound themselves to abide by the terms which should be agreed upon.¹ Great Britain also hesitated to guarantee the settlement of a problem of the interior of the continent, in which she was not herself vitally interested. But Lord Loftus, the British Envoy at Berlin, urged his government to join the Concert of the Powers, writing to Lord Stanley, who was then Foreign Minister, "If unfortunately no conference meets, and this opportunity to form one is lost, the irritation and political dissatisfaction will be greatly increased, and war will be inevitable. The meeting of a conference is the last hope of avoiding war."²

It was finally agreed that a Conference should meet at London, to be composed of plenipotentiaries of the powers which had signed the Treaty of April 19, 1839; and that Italy, which had recently been admitted to the family of nations, should be invited to accredit a representative. The Grand Duke was empowered to summon the Conference to meet May 7. The questions designated for discussion were the independence and neutrality of the Grand Duchy; the guarantee to be given by the powers; and the evacuation of the fortress by the Prussian troops. These suggestions voiced the sentiment of the Luxemburgers who had been self-governing for nearly thirty years, and who looked with consternation upon any plan which would unite them with either France or Belgium. "The very refrain of their popular songs," says Servais, "was '*Nous voulons rester ce que nous sommes.*'"³

The Conference met at London on the appointed day. Lord Stanley was chosen to preside. There was much preliminary bickering of an unsatisfactory nature; Stanley was unwilling to commit England to a guarantee of a purely continental arrangement. Bismarck peremptorily refused to evacuate the fortress unless he were given the guarantee

¹ *Ibid.*, 135f.

² *Ibid.*, 137f.

³ *Ibid.*, 140.

of the powers, not only to respect, but also to cause to be respected, the neutrality of Luxemburg. It is not hard to understand his attitude when we recall that he was asked to give up, in the interests of European peace, a stronghold which opened the way to the very heart of France, and which had been considered, in Prussia at least, a part of Germany for centuries. "By withdrawing their troops from Luxemburg and subscribing to the dismantlement of the fortress," says Eyschen, "Prussia renounced a means of which she was in legal possession until 1866, and in actual possession at a still later date."¹

The definitive treaty was accepted May 11, and ratifications were exchanged at London on the 31st. The terms by which the permanent neutrality was established are found in Article II.

✓ "The Grand Duchy of Luxemburg, within the limits determined by the Act annexed to the treaties of April 19, 1839, under the guarantee of the Courts of Great Britain, Austria, France, Prussia and Russia, shall henceforth form a permanently neutral state. It shall be bound to observe the same neutrality toward all other states. The High Contracting Parties engage to respect the permanent neutrality stipulated by the present Article. That principle is, and remains, placed under the collective guarantee of the powers signatory parties to the present treaty, with the exception of Belgium, which is itself a neutral state."²

Article III provided for the dismantlement of the fortress, which was never to be rebuilt. The Grand Duke, was, however, given permission to support the troops necessary for the maintenance of good order. While the question of the membership of Luxemburg in the Zollverein was not mentioned in the treaty, it was decided by the Conference that this economic arrangement should not be disturbed.³ This was necessary, for the tiny dimensions of the state and its lack of natural resources rendered its independent existence impossible.

¹ Eyschen, 12.

² Hertilet, III, 1801ff.

³ Servais, 176.

The treaty produced great satisfaction, not only among the members of the Conference, but throughout all Europe. Lord Stanley, at the closing session, congratulated the members upon their having accomplished the purpose for which they had met; and expressed the hope that each would have occasion to rejoice for the part which he had taken in the work. Bismarck, in addressing the Parliament of the Confederation on September 24, declared, "We have found a compensation for the right to occupy a fortress, and that one which, according to the opinion of our military authorities, was but of feeble strategic utility, in the neutralization of the territory, and in the European guarantee, in the maintenance of which, if a test should arise, I have faith, in spite of all chicanery. This guarantee is a complete compensation to us for the right to maintain the garrison."¹ The "chicanery" mentioned was an interpretation which the British leaders, Derby and Stanley, were putting upon the collective guarantee, to which we shall have occasion to refer later.² The Marquis de Moustier, who had represented the French nation during these trying times at Berlin, wrote to congratulate his government upon the avoidance of war, and also upon the creation of a new neutral state upon the northern frontier. "How times change!" exclaims Milovanowitch. "One may see clearly how the treaties of 1815 were preferable for France to the new order of things brought about by the events of 1866. In 1815 and 1831 small states neighboring France were neutralized to prevent aggressions by the French. In 1867 France herself rejoiced over a similar creation, because it closed a part of her frontiers against foreign aggression!"³

¹ *Ibid.*, 182.

² V. *infra*, 152, *et seq.*

³ Milovanowitch, 289.

CHAPTER V.

THE CREATION OF THE PERMANENT NEUTRALITY OF THE CONGO FREE STATE

THE case of the neutralization of the Congo Free State is one of particular interest to Americans, being, with the single exception of the attempt to neutralize Samoa, in 1878, the only arrangement of this kind into which the United States has entered.

The Congo is a majestic river, flowing in a general westerly direction from the mountains of East Africa into the Atlantic Ocean. It is classed by geographers as the world's fourth largest river. Its estuary has a width of eight marine leagues, while the mouth proper is about two leagues in width. The river is noted for its depth, admitting large ocean steamers for about 150 miles, to the foot of the famous cataracts. The cataracts exist as an obstruction to navigation for about 300 miles of the course of the river, above which there lies an expansion of the stream, known as Stanley Pool. From this point onward toward the source there are some 900 miles of navigable water. Flowing, as the stream does, through an equatorial region, there are many tributaries, some of considerable dimensions; which makes water communication with the immense region on either side possible. The basin of the river embraces some 1,090,000 square miles;¹ and it is small wonder that its discovery and exploration resulted in a general scramble among the commercial powers of Europe for a foothold in the region.

The Portuguese held a priority of claim for discovery.

¹ Stanley, H. M., *The Congo and the Founding of its Free State*, (2 vols., New York, 1885). II, 361.

Toward the close of the 15th century one of their navigators, Diego Cam, by name, discovered the Congo river. However, the only occupation which was made by Portugal was the maintenance of certain slave-trading posts along the coast. After the Congress of Vienna had outlawed this nefarious business,¹ it was still carried on for several decades clandestinely. It was only in 1871 that Great Britain gave up its right, granted by an early treaty, to appoint commissioners to enforce the suppression of the traffic.²

Several expeditions were made to the Congo during the course of the 19th century, and numerous stations, or "factories", as they were called, were established along the coast, north and south of the river's mouth. The work of Christian missionaries should also be mentioned in connection with the exploration of the country, and the development of European interest in its people; and it was a search for David Livingstone, the lost missionary, that first brought to Africa, Henry M. Stanley, the man who, more than any other, merits the title of "The Explorer of the Dark Continent".

At the instigation of Leopold II, King of the Belgians, a meeting of savants of many countries was held at Brussels, in 1876; and at this meeting was formed the International African Association, with its headquarters at the Belgian capital, and branches in several European countries, as well as in the United States. Our country was represented at the Conference by Henry S. Sanford, who was eventually appointed a member of the Executive Committee of Five, of which King Leopold himself served as chairman.³ The purpose of the national branches was to raise money for the work of exploration; while agents of the central office were to found "hospitable and scientific stations", under the flag of the Association, which was a gold

¹ Hertslet, I, 60.

² *State Papers*, LXI, 22.

³ *U. S. Senate Reports*, No. 39, 1st Sess., 48th Cong., 11.

star on a blue field. These stations were founded for three general purposes. First, the scientific exploration of the unknown parts of Africa; secondly, to assist all travelers, and to maintain communication between the coast and the interior of the country; and, thirdly, to effect the complete suppression of the slave trade. The stations were for the use of all nations.

In 1877, Stanley, by pushing westward from Zanzibar, had discovered the Upper Congo, and followed the entire course of the river to its mouth. His reports aroused great interest in the Upper Congo, and a branch of the International Association was formed the following year, under the name of *Comité d'études du Haut Congo*. The expeditions of this organization were conducted under the flag of the Association, but were financed for the most part by Belgian capital.

✓ In May, 1879, Stanley started, under the auspices of King Leopold, on the second Belgian Expedition to Inner Africa.¹ His conception of the task before him may best be described in his own words. "On the 14th day of August, 1879," says he, "I arrived before the mouth of this river to ascend it, with the novel mission of sowing along its banks civilized settlements, to peacefully conquer and subdue it, to remould it in harmony with modern ideas into national states within whose limits the European merchant shall go hand in hand with the dark African trader; and justice, law and order shall prevail, and murder and lawlessness, and the cruel barter of slaves shall forever cease."² So successful was he in his undertaking that before his return to Europe in August, 1884, he had founded twenty-two stations and negotiated over three hundred treaties with native chieftains. These, with those made on his former expedition, made over four hundred and fifty, con-

¹ Stanley, I, 49.

² *Ibid.*, 59f.

cluded as Stanley says, with the chiefs "of their own free will, without coercion, but for substantial considerations."¹

The negotiation of treaties by Stanley as the agent of the Association immediately precipitated the matter into the field of international law. The question arose as to the validity of a treaty negotiated with the chief of a savage tribe. Prior to 1871 the United States Government had repeatedly solemnized treaties with the natives of this continent, and these treaties had been declared a part of the law of the land.² Following these and many precedents from the dealings of his own country with native tribes, Sir Travers Twiss, who with Professor Arntz, of Belgium, had been appointed by the Institute of International Law to investigate the subject, declared for the validity of the treaties.³ Professor Arntz arrived at the same conclusion.⁴ Three years later Martens, the Russian publicist, in commenting upon this opinion differed with them to some extent,⁵ but as the work of the Conference of Berlin had been done in the meantime, the statement of his opinion had no influence upon the proceedings.

The question was further complicated by the conflicting claims of various European states. Besides that of Portugal, England also put forward a claim based on discovery and the settlement of part of the coast; but what brought the matter to a crisis was the action of the French under Brazza. This explorer had, as an officer of the Association, headed an overland expedition to the Congo in 1880, and had founded upon the river near Stanley Pool a station which he called Brazzaville, in territory which he had received by treaty from a native chief, Makoko. Over this

¹ Stanley, II, 379.

² *Turner v. Miss. Union*, cited in Moore, *Digest*, I, 37.

³ Twiss, Sir T., *La libre navigation du Congo*, R. D. I., XV, (1863), 437ff; 547ff; XVI, (1884), 237ff. See *U. S. Senate Report*, No. 393, 1st Sess., 48 Congress, 16-30.

⁴ *Sen. Rep. supra*, 30-37.

⁵ Martens, F. de, *La Conference du Congo à Berlin*, R. D. I., XVIII, (1886), 149.

station he displayed the flag of France; and this was the sight which greeted Stanley's eyes when he emerged from the forest in his trip of exploration for the Association.¹ It became evident to him that if the Association wished to secure the Congo Basin for itself and for neutral trade, it must depend upon effective occupation, and not upon treaties with native chiefs, any one of whom would sell or re-sell his birthright for a jug of rum. Consequently, on the left bank of the river, opposite Brazzaville, he founded a station which he called Leopoldville, and over which he displayed the flag of the Association.

The action of the French aroused a storm of protest in Europe. It was, indeed, an evil portent for the peace of the colonizing nations. "If the explorers of other nations follow the example of M. de Brazza," wrote Emile de Laveleye, "and plant their national flags on the stations which they establish, we shall soon have on the banks of the Congo French territories, English, German, Portuguese, Italian and Dutch territories, with their frontiers, their forts, their cannon, their soldiers, their rivalries, and, perhaps, some day, their hostilities."² The matter was settled temporarily, by a treaty negotiated between the French government and the Association, April 3, 1884, by which the former renounced its pretensions to the territory in question; but the Association agreed to recognize for France a right of preemption in case it should ever decide to give up all or part of its African possessions.³

Meanwhile Portugal continued to assert its claims to sovereignty over the whole Congo basin. That power entered into negotiations with the British government, the latter being more willing to listen to overtures since the recent attempts to exclude the Germans from South West

¹ Stanley, I, 292.

² Laveleye, E. de, *Le neutralité du Congo*, R. D. I., XV, (1883, 256.

³ Clercq, XIV, 442; *Documents Diplomatiques, Affaires du Congo*, (1884-1885), 48f.

Africa had failed signally. Sir Travers Twiss, it is true, found the claims of Portugal but a subject of ridicule.¹ He, as well as Laveleye cited above, was advocating the neutralization of the territory under the government of the Association.

Feeling that international conflicts were a matter of the near future if some general agreement were not reached, the Institute of International Law was insistent in its declarations for neutralization. Laveleye addressed the Institute in 1883, closing his appeal with these words: "I do not hesitate to say that it would be a disgrace to our age if one of the best conceptions to which it has given birth should succumb because of the indifference or the hostility of the states of whom we ask a very simple thing,—to recognize the utterances due to an initiative inspired solely by disinterested love of humanity and science."²

At the annual session of the Institute for the year 1883, which was held at Munich, M. Moynier, the President of the Red Cross Association, was the first to bring up the question of the Congo. As early as 1878 he had suggested the neutralization of the territory. He now came forward as the champion of a definite plan, which he enlarged upon before the Institute.³ The Institute thereupon appointed a special committee to investigate the subject, and to report at the next annual session; and also adopted the following resolution which was sent to all the governments of Europe, and to that of the United States:

"The Institute of International Law expresses the view that the principle of liberty of navigation for all nations should be applied to the Congo River and all its branches, and that all the powers should take proper measures to prevent conflicts between civilized nations in Equatorial Africa."

Regardless of these suggestions Great Britain negotiated,

¹ Twiss, Sir T., *R. D. I.*, XV, (1883), 562.

² Laveleye, 262.

³ Given by Martens, *R. D. I.*, XVIII, (1886), 246.

early the following year, what Martens calls a "*convention étrange*."¹ It was, indeed, a strange move on the part of the British government, and it nearly dealt a death blow to all the good efforts of the publicists. By it Great Britain recognized the rights of sovereignty of Portugal to all the west coast of Africa between eight degrees and five degrees, twelve minutes, south latitude, and to a considerable extent inland.² This would give to Portugal the mouth of the river, and thus would give that power virtual control of all commerce upon that stream. So great was the storm of opposition raised, not only by the other powers, but within commercial circles and by the press of England itself, that this treaty was never ratified.

The policy of neutrality now received help from an unexpected quarter. Chester A. Arthur, the President of the United States, in his annual message to Congress, December 3, 1883, had called the attention of that body to conditions in the Congo Basin, and, commending the work of the Association, had declared in favor of lending it national support in cooperation with the other commercial powers.³ On February 4, 1884, Mr. Morgan, the Chairman of the Committee on Foreign Relations of the Senate, introduced a resolution urging prompt action on the part of the President toward securing "unrestricted freedom of access and traffic to our citizens in their legitimate enterprises in the Congo Basin from its mouth to its sources."⁴ Rights of sovereignty and of intervention by any power, great or small, over the mouth of the Congo were emphatically denied. On March 26 Mr. Morgan submitted to the Senate an extended report on the Congo question.⁵ This report declared that the interest of our country in the Congo was

¹ *Ibid.*, 148.

² *State Papers*, LXXV, 476f.

³ Richardson, J. D., *Messages and Papers of the Presidents*, (8 vols., Washington, 1896). VIII, 175f.

⁴ *U. S. Mis. Doc.*, No. 59, 1st Sess., 48th Cong.

⁵ *U. S. Sen. Rep.* No. 393, 1st Sess., 48th Cong.

greatly enhanced by the fact that over one-tenth of our population was descended from the negro tribes of Africa; and also because of our protectorate, Liberia, which lies a little west of the region in question. The work of Mr. Stanley also recommended itself very highly to his countrymen. The report further declared that existing conditions were "a just and sufficient foundation for the declaration by the United States which individualizes the flag of the African Association as a national flag, entitled to our recognition and respect". Acting upon this report, in April of the same year, the United States government ordered its officers, "both on land and sea, to recognize the flag of the International African Association as the flag of a friendly government."¹

During the same period the German government had begun to look with covetous eyes on its neighbors' successes at expansion in Africa. Bismarck saw that it would be in the interest of Germany to have the Congo territory declared neutral; and he received assurances from the French, who were now thoroughly frightened by the collusion between England and Portugal, that his efforts in that direction would receive the support of that government. Accordingly, on October 10th, 1884, he communicated to the government of the United States and of the important countries of Europe a proposal for a Conference, which should be held at Berlin later in the year, to take general action on the matter.² He proposed as a basis of agreement the following principles:

1. Freedom of commerce in the basin and mouths on the Congo.
2. Application to the Congo and the Niger of the principles adopted by the Vienna Congress with a view to sanctioning free navigation on several international rivers, which principles were afterward applied to the Danube.
3. Definition of the formalities to be observed in order that new occupations on the coast of Africa might be considered effective.

¹ Malloy, W. H., *Treaties, Conventions, etc., between the U. S. and other Powers*, (3 vols., Washington, 1910), I, 327f.

² U. S. Sen. Ex. Doc. No. 196, 1st Sess., 49th Cong., 7.

Mr. John A. Kasson, the United States Minister at the Court of Berlin, had taken an active interest in the Conference from the beginning of the preparations. The United States government, after deciding that participation in the Conference would not involve it in a departure from its time-honored policy of non-interference with European affairs, and that it would not be bound to accept the conclusions, instructed Mr. Kasson to attend its sessions as the American representative.¹ He was directed to avoid any action involving territorial questions of foreign nations, and to reserve the fullest liberty for his government to act on the conclusions of the Conference. He was to stand by the earlier policy of his government in the recognition of the flag of the Association and to advocate neutral control for the whole region. Mr. Sanford, who had long been an officer of the Association, was named as associate delegate; and Mr. Stanley, who was unquestionably the greatest living authority on African affairs, was requested to attend as expert adviser.² All of the powers having accepted the invitation to the Conference, the 15th of November was agreed upon as the date of its opening session. Just prior to the opening of the Conference Mr. Kasson was confidentially informed by Bismarck that the flag of the Association had been recognized by the German government.³

At the opening session of the Conference Bismarck was, with the usual ceremonies, chosen chairman; and he proceeded to elaborate the purpose of the gathering.⁴ He declared it to be the fundamental idea of the program to facilitate access to the interior of Africa for all commercial nations; and suggested that it would be well for goods intended for the interior to be admitted free anywhere on the African coast. Having in mind the simplification of the

¹ *Ibid.*, 13f.

² *Ibid.*, 16.

³ *Ibid.*, 23.

⁴ *Ibid.*, 25f.

task which was before the Conference, Bismarck announced a project by which the powers exercising sovereign rights in the basin of the Congo should agree to accord free access to these territories to all nations. While expressly declaring that it was not within the competency of the Conference to decide concerning the validity of previous possessions, he proposed that, in order for an occupation in the future to be effective, the occupying power should, within a reasonable time, furnish evidence, by positive institutions, of its intention and ability to exercise its rights there, and to fulfil the duties connected therewith. At the close of the Chancellor's address Sir Edward Malet, the British plenipotentiary, spoke at some length, supporting, on the whole, Bismarck's suggestions; but he made it clear that the case of the Niger was very different from that of the Congo.¹ The coast region about the mouth of the former was entirely under British control, and hence, while equal protection was accorded to the commerce of all nations, the British government would not accept any plan for the control of that river by an International Commission.

At the second session, on November 20, Mr. Kasson took the opportunity to present the views of his government,² calling attention to the fact that the interior of the country had first been explored by an American. He explained the reasons why his government had recognized the flag of the Association, declaring that sovereign rights had been obtained by that organization through its treaties with the native princes, and that it had established *de facto* governments for the maintenance of law and order, and the protection of the rights of all. He declared that his country would favor neutralization of the Congo territory against aggression, with equal rights for all under the government of the Association.

¹ *Ibid.*, 25f.

² *Ibid.*, 29.

³ *Ibid.*, 33f.

A commission was appointed to investigate and report of the proper definition of the Congo Basin.¹ The question to be solved was whether the "Congo Basin" mentioned in the preliminaries should be limited strictly to the geographical basin, or be held to include the whole economic basin which looked to the Congo for an outlet, as well as the overland routes which were necessary for the fullest commercial development of the region. Mr. Kasson favored the latter interpretation, and was ably seconded by Mr. Stanley.² By the final settlement the Atlantic Coast was neutralized from two degrees, thirty minutes South latitude, to the mouth of the Loge River, at about eight degrees South. The northern boundary followed the parallel two degrees, thirty minutes until that parallel intersected the geographical basin of the Congo; and the southern boundary followed the course of the Loge River to its source, whence it struck due eastward until it, too, intersected the geographical basin. The entire territory east of the Congo Basin was included in the neutral zone, from five degrees North latitude to the mouth of the Zambezi River, provided the consent of the governments of Portugal and Zambezi could be obtained; and the powers agreed to employ their good offices to obtain such consent.³ Thus the Free Trade area would contain some 2,400,000 square miles.

It was first proposed to settle the question of import duties by making them forever illegal; but Baron de Courcel, the French plenipotentiary, suggested that this might give rise to unpleasant conditions should, at some time in the future, the native tribes reach a stage of national development when it would be unjust to compel them to abide by tariff regulations imposed upon them by the powers of Europe.⁴ Con-

¹ *Ibid.*, 42f.

² Stanley, II, 395, 409f.

³ Hertslet, *Map of Africa by Treaty*, (3 vols., 3rd Edition, London, 1909), II, 467.

⁴ U. S. Sen. Ex. Doc. No. 196, 1st Sess., 49th Cong., 152.

sequently, the Conference decided not to establish a permanent financial regime; and reserved the right to decide, after twenty years, whether freedom of entry should be maintained or not.¹

As has been said, the initiative in the matter of neutralization came from Mr. Kasson. The German government immediately declared in favor of the step;² and Belgium followed suit, requesting, however, that she might be excused from any participation in the guarantee which would bind it to cause the neutrality of the Congo to be respected; and in this attitude it was consistent with its earlier stand toward the guarantee for Luxemburg.

The final action taken in the matter is found in Chapter III of the Act of the Conference of Berlin.³

"Article X. In order to furnish an additional guarantee of security to commerce and industry, and to promote, by the maintenance of peace, the development of civilization in the regions mentioned in Article I, and placed under the regime of commercial freedom, the high parties that have signed the present Act and those which shall hereafter adhere thereto, pledge themselves to respect the neutrality of the territories or parts of territories which are dependencies of said regions, including the territorial waters as long as the Powers that exercise, or that may hereafter exercise rights of sovereignty or protectorate over those territories, using their option of proclaiming themselves neutral, shall fulfil the duties which neutrality requires.

"Article XI. In case a power exercising rights of sovereignty or protectorate in the countries mentioned in Article I, and placed under the free trade system, shall be involved in a war, the High Signatory Parties to the Permanent Act, and those which shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to the Powers and comprised in the Conventional Zone of commercial freedom may, by the common consent of this Power and the other belligerent or belligerents, be placed during the war under the regime of neutrality, and be considered as belonging to a non-belligerent state, the belligerents

¹ Hertslet, II, 467f.

² U. S. Sen. Ex. Doc. No. 196, 1st Sess., 49th Cong., 63.

³ *Ibid.*, 300; Hertslet, II, 467.

thenceforth abstaining from extending hostilities to the territories thus neutralized, and from using them as a base of warlike operations.

"Article XII. In case a serious disagreement, originating on the subject of, or within the limits of, the territories mentioned in Article I and placed under the system of commercial freedom, shall arise between any Signatory Powers of the Permanent Act, or the Powers which may become parties to it, these Powers bind themselves, before appealing to arms, to have recourse to the mediation of one or more friendly Powers. In a similar case the same Powers reserve to themselves the option of having recourse to arbitration."

Thus the permanent neutrality of the Congo was created. By its terms were included colonies of Great Britain, France, Portugal, Germany and Italy, the native kingdoms of the interior and of Zambezi, and the lands of the International African Association of the Congo. The latter underwent a change of status during the period that the Conference was in session. Before the close of the Conference all the states interested in the affair, with the exception of Zambezi, had recognized the independence of the Association.¹ A letter from Colonel Strauch, its President, which contained its formal adherence to the acts of the Conference, was read at the closing session; and, in commenting on it, Bismarck announced that a new state had, by the acts of the past months, come into existence.² On August 1 King Leopold, whose great interest and investments in the work of the Association made him the logical party, announced that he had been chosen as the first ruler of the new state; and that he had been granted, by the Belgian Legislative Chambers, permission to accept the title.³

Whatever the weaknesses of the work may have been, it is certain that at the time it was hailed as the great diplomatic triumph of the age. Bismarck, in his address at the

¹ *U. S. Sen. Ex. Doc. 196, 1st Sess., 49th Cong., 184.*

² *Ibid., 196.*

³ *Ibid., 327.*

closing session of the Conference, declared, "The work of this Conference, like all other labors of man, may be improved and completed, but will mark an advance in the development of national relations, and form a new bond of union among civilized states."¹ Sir Travers Twiss, who had labored unceasingly for the success of the Conference, declared it an event which, in its importance in international relations, was second only to ~~that~~ of the Congress of Vienna.² Martens, while far from as enthusiastic, was of a favorable opinion; and he quotes from Guyot a statement comparing it favorably with Westphalia and Vienna.³ President Cleveland, in his first annual message to Congress, December 8, 1885, declared the arrangement a fortunate one,⁴ while Mr. Stanley, who had given his life work to Africa, expresses his unbounded satisfaction with the arrangements which had been made at the Conference.⁵

¹ *Ibid.*, 294.

² Twiss, Sir T., *Le Congrès de Vienne et la Conférence de Berlin*, *R. D. I.*, XVII, (1885), 201.

³ Martens, F. de, *R. D. I.*, XVIII, (1886), 244.

⁴ Richardson, VIII, 329f. However, Mr. Cleveland did not submit the treaty to the Senate for ratification, giving as his reason for refraining from so doing that "an engagement to share in the obligation of enforcing neutrality in the remote valley of the Congo would be an alliance whose responsibilities we are not in a position to assume."

⁵ Stanley, II, 407.

CHAPTER VI

MISCELLANEOUS NEUTRALITIES

I. *The Republic of Cracow*

✓ THE attempt to neutralize the Republic of Cracow grew out of the bitter struggle at the Congress of Vienna over the disposal of Poland. Previous to the opening of the Congress there had been a concentration of Russian and Austrian forces in the former Polish territories, the latter holding Galicia, while the city of Cracow was in the hands of the Russians.¹ The solution of the problem was regarded as one of the most difficult tasks of the Congress, since it involved the mutual jealousies of the three Eastern Powers; while Great Britain and France, being removed from actual participation in the disposal of the territories, lent neither aid nor sympathy to their plans.² At the outset the future of the Polish territory seemed to lie in the hands of Russia and Austria; yet Prussia was deeply interested in the disposition made of it; and, by holding the balance of power between the two rival Empires, she used her advantage to gain a valuable increase of territory in Germany.

It was the Russian Emperor's desire to form a new Polish state out of the disputed territory. Over this new state he was to be the ruler, and thus it would be joined in personal union to the Russian Empire, under the House of Romanoff. He promised the Poles a constitutional form of government,³ and even after he had been forced to give in

¹ Weil, I, 20.

² *Ibid.*, 22.

³ *Ibid.*, 269.

to the demands of Prussia and Austria for a division of the Polish territory, he still promised that the part which fell to him should be governed by its own constitution. Furthermore, he insisted that the Vistula should be the boundary between Poland and Prussia throughout its entire course, thereby opposing the claims of the latter to the towns of Thorn and Dantzic, on the east bank of that river.¹

Meanwhile Great Britain had declared for an independent Poland, under a distinct dynasty, this being consistent with her policy of erecting buffer states between the Great Powers.² The Treaty of Warsaw, of February 28, 1813, had provided for the division of the Grand Duchy of Warsaw among the three Eastern Powers;³ but, by a new agreement entered into at Vienna in September, 1814, the right of Great Britain to participate in any action was recognized.⁴

Castlereagh held tenaciously to the stand taken by his country at the beginning; but was importuned by Hardenberg, of Prussia, who was under the influence of Metternich, to give in, since a Polish state under the sceptre of Alexander would weaken, rather than strengthen, the power of Russia.⁵ By November 11 an agreement had been effected between Alexander, Metternich and Hardenberg, in opposition to Castlereagh.⁶ The existence of some kind of Polish state was now practically assured; and the disposal of such territories as were not to be included within it became the predominant question. In December Alexander declared in favor of a free and neutral city of Cracow, and let the Austrian government feel that to refuse to accede to his proposal would mean war.⁷ The Austrians, knowing that a strip of neutral territory between

¹ *Ibid.*, 386.

² Chodzko, II, 265f.

³ Martens, *Nouveau Recueil*, VI, 234.

⁴ Chodzko, I, 250.

⁵ *Ibid.*, 406.

⁶ *Ibid.*, 417.

⁷ Well, I, 711.

them and Russia would be of great service to them, and that Cracow was of no military value, accepted Alexander's proposal. On April 3, 1815, commissioners were charged by the three Eastern Powers with the organization of the Republic of Cracow.¹ and, a month later, joint treaties were signed between Russia, Austria and Prussia, by which the freedom, independence and neutrality of the Town of Cracow and its surroundings were recognized.² This arrangement was later embodied in the Final Act of the Congress of Vienna.³ The Duchy of Posen was added to the territory of Prussia; Galicia was confirmed to Austria; while the Grand Duchy of Warsaw, rechristened the Kingdom of Poland, was placed under the sceptre of the Emperor of the Russias.

By the terms of the Final Act which bore upon the Polish question the Town of Cracow with its territory was established as a free, independent and strictly neutral city, under the protection of the Eastern Powers; while the latter were strictly forbidden to found any military establishments which might threaten the neutrality of the new Republic. The Town of Cracow was, on the other hand, forbidden the privilege of granting asylum to fugitives, deserters or persons under prosecution, belonging to any of those Powers; and such fugitives were to be given up immediately, if captured on Polish soil.

It was the interpretation put upon this last provision which resulted in the undoing of the little state, after an uncertain existence of thirty-one years. The almost constant insurrections of the Poles in the neighboring provinces could not fail to awaken echoes in the breasts of their countrymen at Cracow. The Town was repeatedly occupied by troops of the protecting Powers in disregard of the provisions of the Final Act, on the pretence that refugees were being harbored

¹ *Ibid.*, 576; Chodzko, III, 1166. .

² Chodzko, III, 1146.

³ Hertslet, *Map of Europe*, I, 96, 107, 121, 218.

there. In 1833 the protecting Powers modified the constitution which, in 1815, they had given and guaranteed to the Republic, taking to themselves the right to name the professors in the University of Cracow. Finally, when a Polish insurrection broke out in Galicia, in 1846, the Austrian government declared that Cracow had been the center of the conspiracy, and that forays had been made into Austrian territory from within the bounds of the Republic; and, by a treaty with Russia and Prussia, November 6, of that year, the entire territory was annexed to Austria.¹ Inasmuch as the signers of the Final Act of Vienna had guaranteed the arrangements thereby made, Great Britain and France entered protests against this violation of treaty agreements.² The protests were, however, but mild in character; and, as they contained no suggestion of an appeal to arms, they made no impression upon the Austrian government. No action was ever taken to reverse the judgment of the Eastern Powers.

There is no question but that the Austrian government exceeded its rights when it absorbed Cracow. The danger that it would furnish a hot-bed for conspirators was foreseen by the Powers at Vienna, and they took their own precautions to secure themselves against it. The right of interference to compel the expulsion of refugees, although a serious limitation upon the sovereignty of Cracow, could in no way be interpreted so as to justify absorption. Nor did the fact that Cracow had been placed under Austrian control in 1795 carry with it any legal sanction for the dissolution of the arrangements of the Treaty of Vienna. No single provision of that Treaty could be broken without establishing a dangerous precedent for the other Signatory Powers, should the time ever come when it would be to their advantage to follow it. This point did not escape the

¹ Hertslet, II, 1061ff; Chodzko, IV, 1832ff.

² Hertslet, II, 1068ff; 1073ff.

French government, which called attention to it in the protest against the act of incorporation.

2. *The Neutralization of Savoy*

We have already noted that a part of Savoy bordering Switzerland on the south-west was included as an annex to the neutrality of that state.¹ The sanction of the arrangement is found in Article XCII of the Final Act of Vienna. By it the Provinces of Chaublais and Faucigny, and the whole of the territory of Savoy north of the Ugine River, were neutralized; and the Swiss Confederation was empowered to supply for these territories whatever garri-sons should be deemed necessary to defend this neutrality in time of war.

By the Treaty of Turin, of March 24, 1860, the King of Sardinia ceded Savoy and Nice to Louis Napoleon, as a reward for assistance against the Austrians;² but the cession was qualified by the provision that the neutralized parts of Savoy were to continue in the same status as before. The Swiss government, on March 28, entered a vigorous protest against the cession,³ holding that it, as an interested party, should have been permitted to take part in the negotiations, and insisting upon its rights, under the international agreements of 1815, to occupy by Federal troops the neutralized region in time of war. An appeal was made to the powers which had guaranteed the former arrangement to prevent the contemplated action; or, if this were impracticable, to demand the cession to Switzerland of the frontier districts of Savoy.

The Treaty of Turin received the definitive sanction of the governments of Sardinia and France; but, on June 20, the French Minister for Foreign Affairs offered to join in any arrangement which the Powers might think best for reconciling Article XCII of the Final Act of Vienna with

¹ V. *supra*, 32.

² Hertslet, II, 1430.

³ *Ibid.*, 1435f.

the terms of the Treaty of Turin.¹ He suggested a General Conference of the powers; an exchange of notes among the guarantors and Switzerland itself, by which France would recognize itself bound by the same conditions as Sardinia had been hitherto; or, finally, a deposition leaving the settlement of the matter to be worked out by direct negotiation between France and Switzerland. Lord Russell, replying for the British government five days later, declared in favor of a Conference, which should be held at Paris, and in which the guaranteeing powers and Switzerland and Sardinia should participate.² The Conference, however, was never held.

3. *The Neutralization of the Ionian Islands*

By a special act of November 5, 1815, between Great Britain, Russia, Austria and Prussia the Ionian Islands off the west coast of the Balkan peninsula were formed into the United States of the Ionian Islands, and made a protectorate of Great Britain.³ To the protector was given the right to occupy the fortresses of the interior, and the native troops were placed under the orders of the British Commandant.

The independence of Greece was established a few years later, and was guaranteed by Great Britain, France and Russia. Great Britain eventually turned the Ionian Islands over to the new kingdom; and, to prevent them from falling into the hands of the Turks, should war break out in the Balkans, or, on the other hand, from becoming too great a menace to Western Turkey, because of Greek garrisons, the Conference of London, by a treaty of November 14, 1863, declared for the neutralization of the Islands,⁴ and ordered the demolition of the fortifications.

The serious restriction upon the sovereignty of the Greek

¹ *Ibid.*, II, 1448.

² *Ibid.*, 1450.

³ *Ibid.*, I, 337f; *State Papers*, III, 250.

⁴ Hertslet, II, 1569f; *State Papers*, LIII, 19f.

X nation in the islands met with little support even among the Powers which had planned it; and so determined was the opposition on the part of the Greeks and Ionians that it was finally limited to the two northern islands of the group, Corfu and Paxo. This arrangement was sanctioned by the protocol of a Conference held at London, March 29, 1864,¹ and the Sultan gave his adhesion April 8, 1865. Great Britain, France and Russia, by virtue of their position as guaranteeing powers, made a formal declaration of the permanent neutrality of Corfu and Paxo; and the Courts of Prussia and Austria gave their consent. The King of the Hellenes engaged, on his part, to maintain the neutrality. This arrangement still exists, and has given rise to very little friction.

4. *The Samoan Islands*

In 1889 an agreement was reached at Berlin by representatives of the United States, Great Britain and Germany, by which a regime somewhat similar to permanent neutrality was established in the Samoan Islands. In order to understand the significance of this agreement, and to appreciate the difficulties under which the commissioners labored, a brief sketch of the history of the Islands will be necessary. The group lies in the Pacific Ocean, extending from approximately thirteen degrees, thirty minutes, to fourteen degrees, thirty minutes, south latitude and from approximately one hundred sixty-nine degrees, thirty minutes to one hundred seventy-three degrees, west longitude. It contains three islands of importance, Savaii, Upolu and Tutuila; with some dozen or more smaller ones. The importance of the group lies in its geographical situation, rather than in any intrinsic value of the islands themselves. Containing several good harbors in a part of the Pacific where few harbors are to be found, they are useful to the commercial nations for coaling stations. Great Britain, especially the colonies of Australia

¹ Hertslet, III, 1589f.

and New Zealand, clung tenaciously to the foothold that had been gained in Samoa, because of its importance as a cable station on the Trans-Pacific line which they hoped soon to see laid connecting Vancouver and Auckland. The United States felt itself interested in the disposal of the islands because of its interest in the Isthmus of Panama, the canal being, even at that day, considered merely a matter of time. Germany had the largest actual commercial interest in the islands, and regarded their annexation as a part of the scheme of colonial expansion upon which that government embarked during the closing decades of the last century. The Germans, throughout the entire controversy, were inclined to pay little heed to the rights of the natives, or to the claim of the latter to self government. The United States, on the other hand, stood for the maintenance and integrity of the native governments; while the British followed no fixed policy, but were, as a rule, inclined to favor the attitude of the United States. X

Commercial relations were established between the United States and the islands about the middle of the last century,¹ and an agreement by which the United States government was given the privilege of a naval station in the bay of Pago-Pago, in the island of Tutuila, was effected, on February 17, 1872, by Commander Meade, of the U. S. S. *Naragansett*. In return the native chief requested the friendship and protection of the United States; but when President Grant communicated the agreement to the Senate its terms were regarded as contrary to the policy of our government, and it was never ratified.² However, the harbor has remained since that time under our control.

With the development of commerce and trade our Department of State was influenced, in 1873, to send Colonel Steinberger to the islands, in order to gain trustworthy in-

¹ Moore, J. B., *A Digest of International Law*, (8 vols., Washington, 1906). I, 536.

² *H. Ex. Doc. No. 161, 1st Sess., 44th Cong., 6.*

formation as to actual conditions there; and his report was communicated to Congress early the following year.¹ A few months later he was sent back on a special diplomatic errand. During this, his second stay, he engaged in questionable transactions, being accused of using his influence in Samoa to further the trade of the German firm of Godeffroy and Son, of Hamburg;² and also of establishing a government of which he was virtual dictator, and which he claimed to have placed under the protection of the United States. He was subsequently deported on a British man-of-war.

On January 16, 1878, the first formal treaty effected by the Samoan government with a foreign power was concluded at Washington, through the efforts of Mamea, a native prince who had been sent there for that purpose. By the terms of this treaty the rights of the United States in the harbor of Pago-Pago were recognized, and the Samoan government agreed that it would not exercise nor authorize any jurisdiction within said port adverse to such rights of the United States or restrictive thereof. Uncertainty arose as to the correct interpretation of this clause; but it was held by the United States government to amount to exclusive jurisdiction.³ The United States agreed to employ its good offices for the purpose of adjusting any differences which might arise between the Samoan government and any other government with which the United States entertained friendly relations. Although this agreement was frequently construed as amounting to a protectorate, the United States government has never supported such an interpretation.⁴ Indeed, it would have been a radical departure from its traditional foreign policy to have entered into an agreement in-

¹ *Sen. Ex. No. Doc. 45, 1st Sess., 43rd Cong.*

² *H. Ex. Doc. No. 161, 1st Sess., 44th Cong., 128.* The Document is also given in Cooke, *Samoa, Nineteenth Cent.*, XIX, 298ff.

³ See Leigh, *The Powers and Samoa, Fort. Rev.*, N. S. LXV. (1899), 71.

⁴ Moore, *Digest*, I, 538.

volving a protectorate; and a highly impolitic act as well, since the claims of Great Britain and Germany would have been compromised thereby.

As soon as the terms of the American agreement became known to the German authorities in the islands they raised a protest, claiming that by the favors afforded to the United States the natives had violated previous agreements made with Germany.¹ Use of force on the part of the Germans followed, but friendly relations were again established when, in January, 1879, a treaty was concluded by which Germany was granted exclusive rights to establish a naval station in the harbor of Saluafata. A treaty conferring the most favored nation privileges was concluded between Samoa and Great Britain a few months later; and the latter power was granted the right to establish a naval station and coaling depot on the shores of a Samoan harbor thereafter to be designated. Apia, the local capital, Saluafata, and that part of the harbor of Pago-Pago which might thereafter be selected for a similar purpose by the government of the United States, were excepted.² In December of the same year the three Treaty Powers recognized the legality of the government of the native King Malietoa Talavou, who, at the moment, was dominant among the warlike factions of the islanders.³

The civil war of the preceeding summer had necessitated, on the part of the consuls, joint action with the various factions of the natives, by which, on May 29, all had agreed to respect the neutrality of the territory in and about Apia. Upon the death of Malietoa Talavou, the Vice-King, Malietoa Laupepa was appointed to succeed; and, after much delay and some hostilities, the leader of the insurgent party, Tamasese, accepted the post of Vice-King and was so recognized by the consuls in a formal ceremony of July 12, 1882. Through the intrigues of the German consul

¹ *H. Ex. Doc. No. 238, 1st Sess., 50 Cong., 268.*

² *State Papers, LXX, 133f.*

³ *H. Ex. Doc. No. 238, loc. cit.*

Malietoa was led, on November 10, 1884, to sign a new treaty with the Imperial government, by the terms of which German officials were to be admitted to the Samoan Council of State, and to the special police force; while a German was to act as official adviser to the King.¹ It may be said, to the credit of Malietoa, that when informed of the full meaning of the treaty which he had signed he refused to put it into operation. This refusal precipitated high-handed proceedings on the part of the German Consul-general, and blood was shed before stable conditions were again restored in the islands. Both the American and the British Consuls entered vigorous protests against the conduct of the Germans, who were even accused of instigating Tamasese to revolt. Malietoa now applied to Mr. Greenebaum, the American Consul, for protection. The latter, apparently upon his own initiative, on May 14, 1886, declared the islands under the protection of the United States.² The situation grew more serious as the rival factions of the natives prepared in earnest for war. The American and British Consuls continued to urge upon Malietoa a policy of forbearance, while the German Consul-general aided by retracting some of the steps which he had recently taken. He even went to Tamasese in person to urge him to refrain from hostilities.

Meanwhile the United States government repudiated unconditionally the act of its consul, and suggested that the German and British Ministers at Washington be instructed to enter into negotiations with Mr. Bayard, the American Secretary of State, with a view to the establishment of order in the islands. To insure intelligent action each of the three governments despatched an agent to the islands to investigate conditions there and to make a first-hand report.³ The Conference met at Washington in the summer of 1887, and

¹ *State Papers*, LXXV, 508f; *H. Ex. Doc. No. 238, 1st Sess., 50th Cong.*, 5.

² *Ibid.*, 24ff.

³ *Ibid.*, 29ff.

used these reports as a basis of their discussions.¹ Sir Lionel West represented the British government, Baron von Alvensleben, the German. It soon became evident that no agreement could be reached, since it was necessary for each representative to confer with his government on any plan which might be suggested to reconcile the widely different views of Mr. Bayard and Baron von Alvensleben. Accordingly an adjournment till autumn was agreed upon. The American government understood that during the recess the *status quo* should be preserved in the islands.² The Germans, however, seized the opportunity to dispatch four warships to Samoan waters. It declared war upon Malietoa, on August 24, and, having speedily overthrown that unfortunate chief, set up his rival, Tamesese as King, with a German, Brandeis, as official adviser. Malietoa was deported, but the natives rallied about Mataafa, and revolted against the German rule. Mataafa was elected King by the insurgents, on September 9, 1888, and two months later he succeeded in defeating, with a loss of fifty men, a force of German marines which was attempting to land on a pretense of protecting German plantations.

American ships were ordered to the islands, and the press of America and of Europe discussed the probability of a war between the United States and Germany. ✓ However, diplomatic exchanges between the Department of State and Bismarck were kept up; and this, with the destruction of the ships of both nations by a hurricane in the Bay of Apia, in March, 1889, paved the way for a peaceful resumption of the consultation which had been adjourned in 1887; and after Germany had given assurances that the independence of the islands would not be put in question, the Conference was renewed in Berlin, April 29, 1889. Mr. John A. Kason, the veteran American diplomat who had ably represented his government at the Berlin Conference on African

¹ The Protocols of the Conference are given in *For. Rel.*, 1889.

² *Ibid.*, 114ff.

Affairs four years earlier, headed the American delegation; Sir Edward Malet, who had filled a similar position for England, headed the British; while Count Herbert von Bismarck acted as spokesman for Germany.¹ On June 14 there was signed the General Act of Berlin, of 1889. Article I declared that the islands of Samoa were to be neutral territory, in which the citizens and subjects of the three signatory powers were to have equal rights of residence, trade and personal protection. The three powers recognized the independence of the Samoan government and the free right of the natives to elect their Chief or King, and to choose their form of government according to their own laws and customs. The treaty further provided for the restoration of Malietoa to the Kingship. "The principle features of the government planned by this treaty were a supreme court, to consist of one judge, styled the Chief Justice of Samoa, who was to be appointed by the three treaty powers, or, if they could not agree, by the King of Norway and Sweden; a municipal government for the district of Apia, by a council whose president was to be agreed upon by the powers; a special commission for the settlement of claims and titles to lands, and a system of revenue consisting of import and export duties, capitation and license taxes, and certain occasional duties."² In order to insure peace, Mataafa and eleven other chiefs of the opposition were deported; but internal disturbances continued to occur, the rebels being, after the deportation of Mataafa, headed by the former Vice-King Tamasese.

With a change of administrations at Washington, Mr. Cleveland, who became, for a second time, President on March 4, 1893, lost no opportunity to attack the arrangement. President Harrison had expressed the hope that the treaty would result in "the permanent establishment of law

¹ See *For. Rel.*, 1889, for complete documents of the Conference; also *State Papers*, LXXXI, 1217.

² Moore, *Digest*, I, 547f.

and order in Samoa on the basis of the maintenance of the rights and interests of the natives as well as of the treaty powers."¹ The Democratic administration attacked the General Act of Berlin as an entangling alliance "in plain defiance of the conservative teachings and warnings of the wise and patriotic men who laid the foundations of our free institutions."² The objections rendered by the administration were given additional strength by the fact that the revenue from the islands had proved insufficient to cover the expense of the tripartite government, and this deficit had to be met by advances made by the treaty powers.³ Although President Cleveland continued his attacks,⁴ and Mr. Olney, the Secretary of State, actually informed the German ambassador that the treaty was unsatisfactory to the United States, and was one which its interests required to be essentially modified or altogether abrogated,⁵ Congress took no action upon their suggestions; and when, in 1897, the inauguration of President McKinley brought in a new Republican administration, the treaty of 1889 was still in force.

With the death of King Malietoa in 1898 the situation in the islands again became acute. Mataafa and his banished associates were brought home, in order that the new King might "be duly elected according to the laws and customs of Samoa."⁶ Upon the proposal of the British government a joint commission was appointed to govern the islands until a satisfactory election could be held; but before this body had begun to function the Chief Justice had espoused the cause of one, Malietoa Tanu, and Mataafa and his followers were again in open revolt. With the arrival of the Commissioners in Samoa the Kingship was temporarily

¹ Richardson, IX, 34.

² *Ibid.*, 531.

³ *Sen. Ex. Doc. Nos. 93 and 132, 2nd Sess., 53rd Cong., and No. 97, 3rd Sess., 53 Cong.*

⁴ Richardson, IX, 635.

⁵ *For. Rel.*, 1896, 534f.

⁶ *Ibid.*, 614ff.

ly dispensed with, the consuls of the treaty powers being entrusted with the management of the government. In their final report the Commissioners declared that the chief sources of difficulty in the islands were the Kingship, the rivalries of foreign nationalities, the absence of regular government outside of Apia, and the distribution of large quantities of arms among the natives in consequence of the insufficient enforcement of the customs regulations.¹

X A proposal for the division of the islands came from the United States during the winter of 1898-1899. The German government eagerly accepted the plan, and was willing to insure for the United States complete control of Tutuila.² On November 14, 1899, a convention was concluded between Great Britain and Germany whereby the former, for remuneration elsewhere, renounced in favor of the latter all its rights in the islands of Savaii and Upolu, and in favor of the United States all rights in Tutuila and the other islands lying east of the one hundred seventy-first meridian west of Greenwich.³ Before the ratifications of this treaty were exchanged, a similar treaty was concluded between the United States, Germany and Great Britain, by which our government gave its sanction to this plan of partition, and the General Act of Berlin of June 14, 1889, as well as all previous treaties and agreements were annulled.⁴ Thus the United States abandoned its earlier policy of maintaining the independence and integrity of the native government in the islands. Tutuila, with the adjacent islands, was placed under the administration of the Secretary of the Navy, while the remainder of the group was organized as a German colony. A noteworthy convention was concluded about the same time between the treaty powers, whereby they agreed to submit to arbitration all claims put forward by their re-

¹ Moore, *Digest*, I, 551.

² *For. Rel.*, 1889, 63.

³ *State Papers*, XCI, 70ff.

⁴ *Ibid.*, 75f; *For. Rel.*, 1889, 665f.

spective citizens for compensation on account of losses which they alleged that they had suffered in consequence of unwarranted military action of the officers of any of the three Powers between January 1, 1899, and the arrival of the Joint Commission in Samoa. The cases were to be decided in conformity with the principles of international law or considerations of equity.¹ The King of Sweden and Norway was chosen to act as Arbitrator, and not only were the claims of nationals of the treaty powers, but those of outside states as well thus amicably settled.

The German government continued to control the larger part of the archipelago until after the outbreak of the Great War, when, in the summer of 1914, sailors from New Zealand took possession in the name of that colony,² thus fulfilling a long-felt desire of the New Zealanders, for it was against the bitter protests of its colonies in the Pacific that Great Britain gave up her claims to Samoa in 1899.³ At the close of the Great War New Zealand was appointed to serve as Mandatary for German Samoa, and the latter will undoubtedly be absorbed as an integral part of that colony.

¹ *State Papers*, XCI, 78ff.

² *Independent*, LXXIX, 365.

³ Leigh, *Fort. Rev.*, LXV, 73.

CHAPTER VII

SOME GENERAL CONSIDERATIONS OF PERMANENT NEUTRALITY

IT is the purpose of the remainder of this dissertation to make clear what the system of permanent neutrality is; what its effects upon both the neutralized and the guaranteeing states are; and to illustrate these conclusions and effects by concrete problems drawn from the history of the neutralized states which have been created since 1815. We shall also devote some time to a study of permanent neutrality in the year 1914.

Believing that the proper approach to an understanding of this system, as of any other international phenomenon, is through historical channels, we have devoted considerable space to a study of the international circumstances and the conventions by which the permanent neutralities were established. The positive bases of research are the treaties in question,—that of Vienna of 1815; of London of 1839; of London of 1867; and that of Berlin of 1885. Of these we have quoted the parts of importance to our study, and frequent references will be made to their provisions as our technical study proceeds.

A preliminary explanation of the meaning of the term permanent neutrality was given at the beginning of our work. We are now in a position to go into the subject in a more extended fashion. According to Oppenheim, whose definition is perhaps as satisfactory as any to be found, "a neutralized state is a state whose independence and integrity are for all the future guaranteed by an international convention of the powers, under the condition that such state binds itself not to take up arms against any other state ex-

cept for defense against attack, and not to enter into such international obligations as could indirectly drag it into war."¹

With this definition the writers on international law are in general accord.² From it certain conclusions may be drawn. It is evident from the name given to the system that the action taken is regarded as for all time. It also must rest upon conventions as a basis, and cannot exist except by special compact.³ Furthermore, it is not created absolutely for the benefit of the neutralized state, but is used by the powers as a means of settling disputed questions among them. In the delicate situation in which all diplomatic affairs were constantly placed during the course of the 19th century, it would be impossible to hold that the Great Powers went out of their way to guarantee permanent peace to three of the minor states of Europe, simply out of a desire to bring the benefits of peace upon them. A glance at the map of Europe will explain, in conjunction with our historical exposition, the international importance of these neutralized territories. Switzerland, for instance, controls the natural passes through the Alps, connecting four of the major Powers of Europe. From the days of the barbarian invasions of Rome to the defeat of Napoleon, the pages of European history are full of struggles for the control of these passes. Roman and Goth, Frank and Hun, mingled their blood with the Swiss mountain streams in their effort to control the natural gateways. During the Middle Ages the mighty inroads of the mediæval emperors, and later,

¹ Oppenheim, I, 140f.

² Kleen, I, 87; Lawrence, *The Principles of International Law*, (London, 1895), 485f; Despagnet, F., *Cours de droit international public*, 4th ed. by de Boeck, (Paris, 1910), 177; Funck-Brentano et Sorel, 44; Holland, *Studies in International Law*, (Oxford, 1898), 271f; Descamps, Em., 95.

³ Wheaton, H., *Elements of International Law*, (8th Edition, by Dana, London, 1866), 510; Bonfils, H., *Manuel de droit international public*, (Paris, 1912), 212.

of the French Kings were made through them. The support which the French Cardinal-Statesmen, Richelieu and Mazarin, lent to the Swiss people was due to the fact that, if they could not hold direct control of this territory for France, they preferred that it should be in neutral hands, rather than under the control of the Hapsburgs; while the tardy recognition of Swiss independence by Austria was finally granted through fear that if it were longer withheld the mountaineers would fling themselves, passes and all, into the waiting arms of France. We have seen how the traditional neutral policy of the Swiss aided in laying the foundation for the successful permanent neutralization of their soil. It would be equally accurate to say that the geographic and ethnological situation of the country is responsible for its traditional policy. Situated as it is on the confines of three great peoples, Switzerland has considerable elements of the stock of each. If the ethnological test were the true test by which to determine a nationality, Switzerland could never lay claim to that distinction. The Germans dominate in the north; there is a smaller section of French in the west; while in the south a still less numerous group is Italian. For centuries, as we have already pointed out, the cantonal divisions, (for each canton was a miniature republic,) rendered a true national state impossible; but since 1815 the heterogeneous population has united under its international regime of neutrality until few states deserve more thoroughly the title of "nation".

When we turn to Belgium we find that, while the geographical features of the country are very different from those of Switzerland, the strategic position of its territory in its relation to France, Germany and Great Britain is no less marked than is that of Switzerland to its neighbors. Through Belgium runs the great highway of Europe.¹ More often than Switzerland has its territory served Europe for a battle-ground. Lacking the natural means of de-

¹ Funck-Brentano and Sorel, 152.

fense as well as, to some extent, the sense of nationality and the love of independence of the Swiss, the Belgian people saw their territories for centuries bartered about by their neighbors, and crossed and recrossed by fighting hosts. Gradually the sense of homogeneity and the similarity of institutions developed a strong desire to unite with France, but this desire was quickly checked by the powers, who, upon the fall of Napoleon, had the disposal of the Belgian people at their discretion. Even their independence was blotted out for a time under the Dutch regime. But the Belgians asserted their rights once more, and they concluded, with the help of the powers, that permanent neutrality which, it was thought, alone could preserve them from a constant repetition of the dangers and disgraces through which they had so often passed.

Luxemburg, while of far less importance than either Switzerland or Belgium, occupies a territory containing a fort which points the way straight to the heart of both France and Germany. As a part of the penalty placed upon France at the close of the Napoleonic wars, this fort was permitted to be garrisoned with Prussian soldiers. But France always chafed under this condition of affairs, and finally, under threat of war, succeeded in obtaining the withdrawal of the garrison, the demolition of the fort, and the neutralization of the territory. This was the logical solution at the time, and was so recognized by the powers. Had Prussia continued to hold, or had France succeeded in gaining possession of, the fort, the war which was destined to break out eventually would have come more rapidly than it did, and the field of operations would have been in a different locality.

Permanent neutrality is, then, the normal and rational product of historical and geographical conditions;¹ yet it is, in its international standing, essentially a legal institution. History has proved, in the case of Cracow for in-

¹ Dollot, Introduction, xi.

stance, that no attempt to erect a permanently neutral state can be successful, unless conditions are favorable to its existence; yet, on the other hand, we feel perfectly justified in saying that this status could never be established except in the public interest of Europe.¹ Speaking on this point, Funck-Brentano and Sorel say, "The European powers deprived themselves of the means of action; they limited their battle-fields in advance, and increased the difficulties of war. They did a wise and politic thing,"² So important a step as this could not have been taken without due deliberation on the part of all interested powers,³ and the sacrificing, on the part of some of them at least, of their individual interests for the common good. We do not mean to imply that all interested states must guarantee the neutrality.⁴ A mere recognition is sufficient. Thus, in 1839, the Dutch government recognized the neutrality of Belgium but did not guarantee it; and, in 1867, Belgium took the same position toward Luxemburg.

The action of the powers in such a case is regarded as sufficient to elevate the neutralization into a principle of the public law of Europe.⁵ That the action of all the so-called Great Powers is to be desired is shown by the fact that the Kingdom of Sardinia was invited to take part in the Conference of London of 1867; and that it joined in guaranteeing the neutrality of Luxemburg, although it could not be said to have the slightest personal interest in the matter.

Again, in order that a regime of permanent neutrality may be successful, the neutralized state should of its own free will become a signer of the treaty.⁶ Switzerland and Luxemburg hailed with joy the recognition of their perma-

¹ Flore, Pasquale, *Nouveau droit international public*. (3rd Edition translated by Chas. Antoine, 3 vols., Paris, 1886), I, 428.

² Funck-Brentano and Sorel, 152.

³ Lawrence, 486.

⁴ Kleen, I, 87.

⁵ Lawrence, 487.

⁶ Bonfils, 213; Rivier, I, 108.

nent status among the powers of Europe; and a similar sentiment was expressed by the International African Association over the neutralization of the Congo. If there was opposition on the part of a strong party in Belgium in 1839, it soon disappeared. It is a generally recognized principle of private law that an agreement entered into under duress is not binding upon the party, and the same rule would apply to a state upon which a status of permanent neutrality was forced against its will.¹ This has generally been recognized by the diplomats at the Conferences. For example, when, in 1863, a proposal was made to place Greece under this regime, so strenuous were the objections raised by that state that the proposal was dropped.² It is obvious that, were the status forced upon any state, it would seize the first opportunity to throw it off; and such an opportunity would come with the first outbreak of war in its neighborhood.³ Since these treaties are concluded in view of war alone,⁴ the whole purpose of the transaction would be defeated. The policies of the permanently neutral state do not vary materially in time of peace from those of other states. Consequently, to place a territory under the regime of permanent neutrality with the option of forsaking it at the outbreak of war would be to create an anomaly.

For a permanently neutral state offensive warfare is forever interdicted. The name itself is sufficient guarantee of this fact. Upon the outbreak of war between two or more powers in any part of the world it is customary for states to exercise their so-called sovereign prerogatives by proclaiming themselves participants or neutrals. From the legal point of view their choice is absolutely free. On the other hand, the permanently neutral state has renounced for all time this option, and its policy during the war is fixed, provided that its neutrality is respected by both belligerent

¹ Despagnet, 177.

² Despagnet, 179.

³ Bonfile, 213.

⁴ Funck-Brentano and Sorel, 153.

partes. It is for this purpose that the permanent neutralities are created. Certain strategic points, to which no single power could present a clear title, are thus placed under the control of an inoffensive state, and are thus removed from the field of action of the belligerents. As a corollary of the renunciation of the right to wage offensive war, all offensive alliances with neighboring states, even in time of peace are absolutely forbidden. It is the duty of such a state to avoid in spirit and in letter every agreement which might entangle it in war.¹ The reason back of this restriction is explained by Funck-Brentano and Sorel. "The neutral state may not conclude any treaty of alliance, nor in general any engagements which states contract in view of war, for, being incapable of performing the obligations which result therefrom, it ought not to assume them. It should avoid any political action which might lead it into engagements of this kind."²

Some writers, however, hold that in this strict interpretation of the law renunciation goes to too great an extreme. Bluntschli reasons as follows:

"Neutral states do not renounce their right to make war; but as long as they remain neutral, they abstain from all participation in it. This principle applies equally to states of which the neutrality is called permanent. To renounce its right to make war would be for a state to renounce its virility, its right to defend and to cause to be respected its constitution. This would be fundamentally to renounce its independence."³

Arguing from this foundation Ernest Nye holds that a neutralized state may make war for its own preservation, a conclusion to which there is no objection, except as to interpretation; and "for its legitimate development," a thesis which it would be difficult to support, and which if left thus

¹ Wheaton, 516; Oppenheim, 571.

² Funck-Brentano and Sorel, 153.

³ Bluntschli, *Le droit international codifié*, (translated into French by M. C. Lardy, Paris, 1895), 743.

indefinite, would give rise to serious differences of interpretation.

There is general agreement among all authorities that a permanently neutral state may conclude with its neighbors certain kinds of treaties of a peaceful character. Whether or not this is to be interpreted to include defensive alliances is an unsettled question. It is sufficient to say, for the present, that such an alliance would be a dangerous thing. Defensive alliances of a small state with a great tend to give the latter a powerful influence over its ally, an influence which could easily defeat the very purpose of the neutralization.¹ Indeed, too friendly relations of Belgium with France and Great Britain was undoubtedly one of the causes which, by arousing the jealousy of Germany, led to the invasion of Belgium in 1914.² If the permanently neutral state may contract a defensive alliance in order to safeguard its own neutrality it may be answered that this is already safeguarded by a special convention in the form of the neutralization treaty, and is thereby guaranteed by many powers, and hence a further alliance would be futile. In spite of all that has been written to the contrary, history shows that the greatest safety for small states lies in the strictest interpretation, on their part, of their treaty obligations. The celebrated Article VIII of the present Swiss constitution, which declares the right of the Swiss government to contract alliances, is regarded merely as a declaration of sovereign powers on the part of Switzerland, and has never been put into operation. In the strictest interpretation of the permanent neutrality treaties, however, no restriction may be put upon treaties governing economic, material or moral interests, provided, of course, that it safeguard itself against the fusion of these interests with similar interests of its ally. Treaties of commerce and navigation, for the execution of

¹ Nys, *Le droit international*, (3 vols., Paris, 1905), I, 428.

² Waxweiler, E., *Belgium Neutral and Loyal*, (N. Y. and London, 1915), Chapter IV.

judgments, the extradition of criminals, of the post, and for the protection of patents and copyrights are unobjectionable.¹ The permanently neutral states were also represented at the Hague Conferences.

Attention may here be called to the fact that only states of the second rank could be successfully neutralized.² No other state would consent to such an arrangement, since thereby it relinquishes the prerogative of self-determination. (It is applicable only to a state which has no ambition to expand, and no so-called "unredeemed territory." It was her ambition to expand northward, thus uniting to her territories the Thracian and Albanian lands occupied more or less by Greeks, that led Greece, in 1863, to refuse to accept the status of permanent neutrality. Bonfils calls attention to the fact that although the neutralized state will, in all probability, be located between the Great Powers, it should not occupy the only passage between them. The experience of the neutral powers situated between France and Germany during the Great War adds emphasis to this point. Belgium and Luxemburg in 1914 occupied the only unprotected sections of the French frontier. Had there been a strong line of forts along the Belgian border of France as well as along the German, it is probable that the strategists of the latter state would have chosen to "hack their way through" some other route, rather than incur the condemnation of the civilized world by breaking their treaty obligations to Belgium. The folly of creating, out of Alsace-Lorraine, a third independent, neutralized state between France and Germany¹ needs no demonstration.

Support has been given by the Russian publicist Martens to the validity of a permanent neutrality unilater-

¹ Despagnet, 183; Wheaton, 517.

² Bonfils, 213.

³ Phillipson, C., *Alsace-Lorraine, Past, Present and Future*, (London, 1918). 271, 282.

ally declared.¹ This conception is, however, generally opposed by nearly all other writers on the question of permanent neutrality. It is true that a state may adopt neutrality as a permanent line of conduct.² The case is strengthened if this policy is incorporated in the state constitution, thus making it a part of the fundamental law of the land. But this unilateral declaration, while admirable as a state policy, is without legal status in international affairs.³ The entire conception of a unilateral declaration is political rather than legal. Nys, in commenting on Martens' article declares—

"This is a complete error. Permanent neutrality is not the fact of a unilateral declaration. It results from the accordance of the wills of the states which are present, and of which one declares itself permanently neutral, or, at least, consents to accept the permanent neutrality, while the others take the engagement to respect it. . . . A unilateral declaration of permanent neutrality cannot bind other states; it is without legal value; as well might a decree pronouncing the inviolability of a state, and pretending to impose on the other states the recognition of a sacred character, without asking them if they wish to assume such an obligation."⁴

To be sure, it is perfectly possible for a small state to adopt for itself a policy of permanent neutrality. This was done by Switzerland, with varying degrees of success for two centuries prior to its formal recognition by its neighbors at Vienna; and it has been the professed policy of Holland, Sweden, Norway and Denmark for decades. Nevertheless, it is a political act. It does not do away with the necessity of making a declaration of the intention to continue such a policy at the outbreak of every war. It places the state making such a declaration in exactly the same position as that held by all neutrals. It places no restrictions upon its conduct in time of peace. Such a state may contract alliances of any kind, whenever, and with whatever power

¹ Martens, *La neutralisation du Danemark*, R. D. M., (Nov. 15, 1903), 314ff.

² Descamps, Ed. 303ff.

³ Lawrence, 486; Nys, I, 429; Bonfils, 212.

⁴ Nys, I, 430.

it pleases. If it chooses to abandon the policy at any time, and to engage in aggressive warfare, the abandonment is not, in itself, a violation of treaty agreements. The state is protected only by the general rules of international law for the benefit of neutrals, and the specific rules laid down by the Hague Conventions to govern such relations. But the further protection, secured by states which have renounced by international conventions the right to make war, and thereby have received the specific guarantee of protection from the powers, cannot be claimed by any such unilateral declaration. In other words, an international status cannot be created by the action of a single nation.

From the point of view of the sanctions given by the powers, there are two classes; (1) those whose status as such is merely recognized, and (2) those whose status as such is guaranteed by the signatory powers. Both classes are given legal recognition, and occupy a definite place in the international field. The powers are bound only to respect the legal status of such states as fall in the first group; but they are bound by their own action to cause this status to be respected for states falling in the second group. The neutrality of Switzerland, that of Belgium, and that of Luxemburg belong in the second group, as they are fully guaranteed by the conventions which created them. The neutrality of the Congo was recognized by the powers, but was not guaranteed by them. Hence it belongs to the first group. The neutrality of Cracow was recognized by the Five Powers, but was guaranteed only by Russia, Prussia and Austria. Hence it was a hybrid neutrality according to this classification.

Just to what extent the guarantee will be of value will be discussed in a later chapter. We may anticipate a moment on the thorny question of the guarantee to say that, if entered into with any degree of sincerity by the guarantors, it is of distinct advantage to all concerned, and gives a tremendous prestige to the international act creating the neutrality.

CHAPTER VIII

THE EFFECT OF PERMANENT NEUTRALITY UPON THE SOVEREIGNTY OF A STATE

It is not surprising to find great variation of opinion as to the effect of permanent neutralization upon the sovereignty of a state, for there is very little agreement among writers upon the nature of sovereignty itself. Oppenheim declares that the condition of neutralization does not in any way destroy the full sovereignty of the neutralized state.¹ The entrance of the state into this status is an act of its own sovereign power, and differs in no way from treaties of alliance and kindred acts of non-neutralized states. Baron Descamps is of the same opinion,² and he is followed by Nys,³ Richter,⁴ and Westlake.⁵

The writers who hold the opposite view, and argue that permanent neutralization involves a loss of sovereignty and renders part-sovereign the states subject to its regime, are no less explicit in their statements, and their arguments are no less logical. Despagnet,⁶ Funck-Brentano and Sorel,⁷ Baumgartner,⁸ Morand,⁹ and Kleen¹⁰ are to be found in this group. The last mentioned takes the lead in the extreme

¹ Oppenheim, I, 142f.

² Descamps, Ed., 340ff.

³ Nys, *Notes sur la neutralité*, R. D. I., 2nd Ser., III, (1901), 21.

⁴ Richter, 21f.

⁵ Westlake, *Notes sur la neutralité permanente*, R. D. I., 2nd Ser., III, (1901), 392f.

⁶ Despagnet, 178.

⁷ Funck-Brentano and Sorel, 153.

⁸ Baumgartner, 23ff.

⁹ Morand, 522ff.

¹⁰ Kleen, I, 88f.

views of the relation of permanent neutrality to sovereignty. Not only does he hold the acceptance on the part of the neutralized state to be a renunciation of sovereign rights, but he regards that act to be a renunciation of an independent existence.

X "This is exactly what every neutralized states does to some extent. It renounces one of the essential attributes of the sovereignty of an independent state. . . . Permanent neutrality is incompatible with the right, inherent in the sovereignty of every independent state, to decide for itself the means for defending its own existence, its integrity, and its rights against the violations of which they may be the object. International law may not lend its sanction to political acts contrary to the very principles which it proclaims. But among these principles figures this, that sovereignty is an essential attribute of a state, and that the decision of questions of peace and war is one of the inseparable functions of sovereignty; all the more since international law recognizes war only as an extreme means of providing for its own defense before a criminal attack directed against the integrity of a state. It matters little in reality, for the question of principle, whether this defense is made on the territory of the state or outside of its frontiers. . . . When permanent neutrality deprives the state of the right to defend itself, or, at least, of the right to decide for itself, it deprives it of a sovereign right, a condition of its political emancipation, and one which is indispensable to the very end of the state as such."¹

He applies also to international law the rule of private law by which are considered null any acts of the individual by which he disposes of his so-called inalienable rights. But not all rules of private law are applicable in the international domain. This is due to the fact that there is no supreme international court with power to impose its will upon the individual states. The only influence to assure the validity of international agreements is the will of the states by which they are made.² Hence, if a state wills to renounce a part

¹ Kleen, I, 95f.

² Hagerup, F., *La neutralité permanente*, R. D. I. P., XII, (1905), 581.

of its sovereign international status, or even to commit "state suicide," there is no higher tribunal to say it "No."

From the mass of conflicting opinion to which we have referred, and to which material might be added indefinitely, it is utterly impossible to draw exact conclusions; nor can we feel justified in accepting the opinion of any one authority to the exclusion of that of another. The difficulty lies, it would seem, in the fundamental conception of the nature of sovereignty itself, and in a vain attempt to make all international relations fit into preconceived rules, as molten metal is run into a mould. It is well to remember in this connection that the law is made for states, and not states for the law. In all relations of men, and international relations are no exception, theories must yield to facts, or by taking full cognizance of the institutions actually in existence, they must submit to an analysis from which they emerge broadened and enlarged, until they can be made to include all existing conditions. When Kleen argues that "international law cannot approve of permanent neutralization,"¹ he ignores the fact that, at the very time he was writing, the permanent neutralization of Switzerland had been for eighty-three years a principle of the public law of Europe; and it is now finishing the one hundred and fifth year of this status. When an institution, in conflict with a scholastic theory, maintains itself for over a century, it is high time that the theory be submitted to a close analysis to determine where its defect lies.

The history of human thought throughout the ages could be covered, for the most part, by telling the story of mankind's struggle to locate something *absolute*. The Deity, the Empire, the Church, the Bible, the King, and, finally, the State, have each served their turn in this capacity; and each has still, even among the most thoughtful, devout worshippers at its shrine. It is in this tendency on the part of mankind to seek an "original, absolute, unlimited and uni-

¹ Kleen, I, 96.

versal power,"¹ that we find the origin of the theory of an indivisible, inalienable sovereignty. Many students of political science today hold this view, and may be called theorists or absolutists. At the other extreme is a steadily increasing group of pragmatists, who hold that the sovereignty of the theorists is but a myth; that sovereignty is merely the power to rule; and hence is capable of all manner of degrees and limitations.² The great majority of scholars, however, are to be found taking a stand between the two extremes. Reluctance to break with old systems and an innate fondness for subtle logic render such hesitant about embracing so extreme an innovation as the pragmatist theory of sovereignty, even while they feel that the extreme stand of the absolutists is no longer tenable. Consequently the utmost confusion, of which the citations already made are a fair example, arises whenever a question involving sovereignty is under discussion.

In one of the most famous passages in the whole realm of jurisprudence, John Austin defined a law as "a command which obliges a person, or persons, and obliges generally to acts or forbearances of a class."³ According to this conception the essence of law is a command; the essence of the command is the obligation on the part of the one commanded to obey; and thus the entire legal system is made to rest purely on force. Coordinate with his conception of law Austin regarded sovereignty as absolute. "If a determinate human superior" said he "not in the habit of obedience to a like superior receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society is a society political

¹ Burgess, J. W., *Political Science and Constitutional Law*, (2 vols., N. Y., 1890), I, 3f.

² Crane, R. T., *The State in Constitutional and International Law*, Johns Hopkins Univ. Studies in Hist. and Pol. Sci., Ser. 25, Nos. 6 and 7, 8.

³ Austin, J., *Lectures on Jurisprudence*, (3rd ed., by R. Campbell, London, 1869), I. 98.

and independent.”¹ It is in endeavoring to harmonize this theoretical conception with existing facts and conditions that many writers have been inclined to distort facts rather than to admit that the conception itself is in error, while, as Professor Dunning says, the fact that there can exist limitations upon sovereignty is “lost sight of . . . through an irrational striving after mathematical exactness in a science which is not exact.”²

It is obvious that under Austin's definition there is no place for international law as such; and he was perfectly consistent with his legal theory when he assigned the rules which govern international affairs to a secondary position, under the nomenclature of “positive international morality.” But under a more liberal definition of law the position of these laws is clearly determined; and their claim to the legal title is amply justified by the fact that they are accepted as law by all civilized nations, and that their provisions are enforced as law in the municipal courts. However, if Austin's conception of law is to be subjected to a revision in favor of existing facts, his conception of sovereignty can claim no exemption from a similar process. In fact, this revision must follow the moment that the legal character of international law is recognized. “As international law deals with actual conditions,” says Professor J. B. Moore, “it recognizes the fact that there are states not in all respects independent that maintain international relations, to a greater or less extent, according to the degree of their dependence. Such states are generally called semi-sovereign,”³ a term meaning part-sovereign, as no one would think the use of the prefix *semi* requires a literal interpretation.⁴

Our problem has to deal with the international phases of sovereignty alone; with what Wheaton calls “external

¹ *Ibid.*, 227.

² Dunning, W. A., *A History of Political Theories, Ancient and Mediaeval*, (N. Y., 1916), 250.

³ Moore, *Digest*, I, 18.

⁴ Westlake, I, 21f.

sovereignty.”¹ Yet there are many authors who have attacked the claims of the absolutists in the field of internal sovereignty as well; and their position has been well sustained. Professor H. J. Laski, of the New School for Social Research, has ably espoused the conception of a division of sovereignty,² and it is in this sense that he has interpreted certain movements of the Churches of Scotland and England during the last century, as well as the stand taken by the Catholic party in Germany against Bismarck. As early as 1906 Professor Giddings reached the conclusion that sovereignty in the absolutist sense did not exist. Said he, “Facts that daily stare us in the face awaken our skepticism about sovereignty of the Austinian description. Is there any power in any commonwealth, that really does compel the obedience of everybody, or even of every particular individual whom it sets out to coerce? Does anyone seriously believe that there is such a power?”³

The same line of reasoning may be applied to the problem of external sovereignty. The international theory of sovereignty is that it consists of a number of rights and powers. “The powers of sovereigns are a bundle or collection of powers, and they may be separated from one another,” said Sir Henry Maine.⁴ The whole field of the foreign relations of a state, in which its external sovereignty finds its exercise, is circumscribed by the mutual rights of other states, and by the terms of existing conventions; for, as Pro-

¹ Wheaton, 53.

² Laski, H. J., *Studies in the Problem of Sovereignty*, (New Haven, 1917).

³ Giddings, F. H., *Sovereignty and Government*, P. S. Q., XXI, (1906), 8.

⁴ Maine, Sir H., *International Law*, (London, 1888), 58.

fessor Krehbiel says, "A treaty is in itself virtually a restriction of untrammelled sovereignty."¹

Is there any state in the family of nations which is free to conduct all of its foreign affairs absolutely to suit its own desires, untrammelled by the desires or rights of other powers? To meet such a situation the Theorists have resorted to a curious fiction by which they hold that a state is still fully sovereign, although it may, by an exercise of its sovereign will, have consented to certain restrictions upon its sovereignty. In other words, the absolute sovereign power is still absolutely sovereign, because it has willed to give away a part of its sovereignty! Haiti and San Domingo are sovereign states, although their governments are upheld by American marines, and their custom houses are in the hands of American officials, because their governments, set up at the point of Yankee bayonets, accepted the situation of their own free will and accord, by an exercise of sovereign power! Such reasoning in Pure Science would be admittedly ridiculous; and it serves well to illustrate the extremities to which slaves to a theory of logic may be driven, when they attempt to account by preordained rules for all the phenomena in actual existence.

Yet this is the exact ground taken by no less an authority than Baron Descamps, who argues that the neutralized state may, by an act of its sovereign will, surrender a part of its sovereign rights, in exchange for certain favors or protection, the transaction being, as Hagerup expresses it, "a mutual exchange of services." We agree with the latter that such an argument can have no legal weight.² In an extended attempt to differentiate between sovereignty and independence, terms which international lawyers as a rule have regarded as synonymous,³ Westlake, one of the Peers

¹ Krehbiel, E., *The European Commission of the Danube*, P. S. Q., XXXIII, (1918), 48.

² Hagerup, 591.

³ Moore, I, 18.

among them, is likewise found on thin ice on this point. He admits that sovereignty is partible, though independence is not.¹ But even after he has gone thus far, he is unable to break entirely away from the Austinian conception, and we find him arguing that, while sovereignty may be divided, no part of it can be destroyed, or cease to exist.² He fails to explain, however, just what becomes of the alliance and war-making powers of the permanently neutral state, after the creation of the permanent neutrality. No claim to them could ever be advanced by the guaranteeing powers. If this were the case, the permanently neutral state would be obliged to forsake its neutrality, when required to do so by its guarantors. It could no longer be styled "permanently neutral." Are the alliance and war-making powers still held by the neutralized state, but in abeyance, capable of being brought out and burnished up whenever the government of that state shall consider the time opportune for such a procedure? Again the neutrality could not be considered "permanent." The truth of the whole matter is that the right of the neutralized state to make offensive alliances and to declare offensive war has ceased to exist. In the face of the theory that sovereignty is indivisible, we submit the fact that it has been divided. It is partible; and, furthermore, its parts are not indestructible.

However much this opinion may conflict with the propositions of the theorists, it has the solid backing of history and of existing institutions; and it is with these things that the student of international law has to deal, rather than with the unrealized ideals of any philosophical system. We sympathize perfectly with Pradier-Foéré when he says, "Metaphysically, there ought not to be half-sovereign states, but historically there have been, and there may be again"³

¹ Westlake, J., *Chapters on the Principles of International Law*, (Cambridge, 1894), 87.

² Westlake, *Notes, etc.*, 393.

³ Pradier-Foéré, *Traité de droit international public*, (8 vols., Paris, 1885), I, 159.

Viscount Bryce speaks of the "extreme artificiality of the doctrine that sovereignty cannot be divided,"¹ and declares that "there are several grades of what may be called semi-sovereignty, or, perhaps more correctly, of imperfect sovereignty."² the weakness of the absolutists' system is that they have worked out hard and fast rules in theory, which cannot be made to cover the cases which we find in fact. They ignore institutions actually in existence, in order to follow their logical reasonings to the end. But, as W. Jethro Brown says, "States are the creation, not of logic, but of history. We find them in every stage of being, becoming, and ceasing to be. Whatever tests we may apply, we must always remember that the first function of a classification is to represent facts; that if facts are infinitely varying, the classification must not be inflexible."³

We have noted the variation of opinion among the authorities as to the effect of the permanent neutralization of a state upon its sovereignty, ranging from the declaration that it carries no restriction to the extreme opinion of Kleen, that it not only restricts the sovereignty, but curtails the independence, thereby rendering the existence of the neutralized state incompatible with the principles of international law. We have shown that permanent neutrality is a decided restriction upon the sovereignty of the neutralized state, as that sovereignty is usually conceived of. It remains for us to show the fallacy of Kleen's argument; and in order to do this we are prepared to go a step farther in our criticism of the theorists' conception of sovereignty.

Sovereignty, as they conceive of it, is capable of existence only in a very highly developed system of states;⁴ and, as a

¹ Bryce, Viscount J., *Studies in History and Jurisprudence*, (London, 1901), 540.

² *Ibid.*, 547.

³ Brown, W. Jethro, *The Austinian Theory of Law*, (London, 1906), 142.

⁴ *Ibid.*, 141.

matter of fact, has never had an existence outside of the minds of the publicists who have championed it.¹ Laski refers to it as "an idol which the merest knowledge of history would prove to have feet of clay."² When a state enters an offensive or defensive alliance it renounces its so-called sovereign right to make war or peace at its own uncontrolled pleasure. When two or more states bind themselves to submit their mutual misunderstandings to arbitration, they sign away their so-called sovereign right to make war. When a group of states guarantee the independence and neutrality of one of their weak neighbors, they sign away their so-called sovereign right to remain at peace under certain circumstances. The effect of these different arrangements upon the absolutists' conception of sovereignty is identical. The obligation to go to war in certain events, under an alliance that is offensive or defensive or both; or the guarantee to cause the neutrality of a state to be respected, is just as much restriction upon a state's sovereign discretion as is an obligation not to go to war, such as a permanent neutral takes upon itself.³ If sovereignty is the original, absolute, unlimited, universal power of a state to manage its own affairs, internal and external, as it sees fit, then no state is sovereign. As has recently been pointed out,⁴ even in internal affairs "the right of a sovereign depends on the consent of the people. As they grant, so they can limit his exercise of the sovereign power." They thus automatically divide internal sovereignty into parts, one of which they vest in an active agent, and the other they hold back. So external sovereignty, if there is any such thing, is split into many parts, to fit the cases which develop in the complex relations of international life.

¹ Pollock, Sir Frederick, *Sovereignty and the League of Nations*, *Fort. Rev.*, N. S. 104, (Dec. 2, 1918), 814.

² Laski, 24.

³ Pollock, 817.

⁴ Baldwin, S. E., *The Vesting of Sovereignty in a League of Nations*, *Yale Law Journal*, XXVIII, (1919), 217.

But why cling to so purely metaphysical a conception of sovereignty at all? Why define it otherwise than merely the power to rule? If this simplified conception is adopted, the most knotty problems are settled without difficulty. A state is, then, no longer bound by philosophical theories, to prevent it from taking action with the best and most progressive thought of the age. It may bind itself by international agreements to pursue, or not to pursue, a certain policy, without inquiring what has become of its sovereignty. It may enter into arrangements for the welfare of the nations in general, without coming in conflict with the shadowy, yet absolute and indivisible sovereignty of certain publicists, which, unfortunately for their doctrine, it is impossible to locate in the government of the United States.¹ It is difficult to find any real value in a modern doctrine of sovereignty, except as it is based on this liberal conception. The term at its best is an abstraction; and some writers have advocated discarding it altogether.² Yet, rationally used, it would serve a useful purpose in international law and jurisprudence, when once we are rid of "the fetich of sovereignty, the exacting, imposing something, which has so commanded our worship as to blind us to the fact that it is a gilded, dumb image."³

¹ Laski, 24.

² Brown, P. M., *Rights of States in International Law*, *Yale Law Journal*, XXVI, (1916-1917), 40.

³ Bliss, P., *Of Sovereignty*, (Boston, 1885), 71.

CHAPTER IX

PERMANENT NEUTRALITY AND INTERNAL SOVEREIGNTY

MANY interesting questions have arisen involving the effect of permanent neutrality upon the internal sovereignty of the state subjected thereto. Since internal sovereignty involves primarily the internal policy of the state, and hence cannot be restricted by any outside power, except at a sacrifice of independence, there is much greater unanimity of opinion among the authorities than we found to exist on the question of external sovereignty. That the permanently neutral state may manage its internal affairs absolutely as it sees fit, subject only to the general rules of international law, is an accepted rule. It is obvious that every specific question of this kind should, in the last analysis, be settled upon its merits, according to the terms of the Convention by which that particular neutrality was created, and after a careful consideration of the circumstances surrounding the case in question.¹ In cases where the Convention is silent, or expresses itself vaguely, it is wise to apply the general principle *In dubio pro libertate*,² and consider the neutrality as carrying the lightest possible restrictions.

One of the most vital questions of this class has to deal with the privilege of the neutralized state to manage its own military affairs, in the exercise of its right of self-defense. A general principle of neutrality enjoins upon all neutral states in time of war the obligation to enforce their neutrality. Resort may and should be had to diplomatic measures first; but if these fail to bring about the desired result, economic war, or even military measures should follow. No

¹ Nys, E., *Notes, etc.*, R. D. I., XXIII, (1901), 20.

² Rivier, II, 393; Hagerup, 589.

neutral state has a right to sit idly by, and see its territory used as a base of operations by one belligerent, or group of belligerents, against another. The question is not one of privilege; it involves a matter of legal duty.¹ Permanent neutrals are under the same obligation in this respect as are simple neutrals. They are bound to use due diligence that their privilege of neutrality be not abused. This involves not merely definite action when a crisis arises, but constant alertness against the possibility of neglecting any practical precautions.

The neutralized state has, however, one recourse to which the simple neutral can lay no claim,—that of appeal to the guarantors of the neutrality. The appeal should be made upon the first obvious threat against the neutrality, inasmuch as the slightest delay may be very costly. But not too much reliance may be put on their assistance. We devote a later chapter to the various interpretations which have been put upon the guarantees of neutrality.² It is sufficient for the present to say that it is highly improbable that any of the guarantors will be anxious to go to war for the sake of the neutralized state alone. Too often the guarantors are themselves the violators; and, as a matter of fact, there has never been any immediate danger of the violation of permanently neutral territory by any power other than one of its guarantors.³

However, no outside power may dictate to a permanently neutral state what steps shall be taken in order to render this precaution effective. Some nations, the United States and Great Britain in particular, have never felt called upon to resort to universal military training in order to be prepared to defend their neutrality, or even to play the role of principal in time of war. On the other hand, the majority of

¹ See the discussion on Neutrality, with citations in *Moore, Digest*, VII, 860ff.

² *V. infra*, 151 *et seq.*

³ Bonfils, 213.

the Continental Powers have felt that not merely their neutrality, but their life itself, depends upon some form of that system. The fact that the Swiss have ever been famous for their fighting qualities, and are successful in the maintenance of a system of universal military training need not imply that every neutralized state would be expected to follow this course. "The engagement to remain permanently at peace does not involve the international obligation to be always under arms."¹ The entire question of the method and amount of defense is for each individual state to decide for itself.

Switzerland has always regarded her right to maintain a trained army as one of the vital safeguards of her existence. The Swiss plan of military service is favorably known throughout the world. The experience through which the Swiss passed during the Hundred Days was not of a nature to inspire confidence in the sincerity of the Powers! and the Swiss people, rendered prudent by the events of that period, have provided against any eventuality of war by maintaining a large part of their male population highly trained and subject to call for service at a moment's notice. As Kleen says, "The military expenses which they support, as permanent as the neutrality which has been promised to them, could scarcely have been more heavy, even if that status had never existed."² Thus the "moral barrier," of which Bonfils speaks,³ is in reality, in the case of Switzerland more than moral; it is an actual barrier, the combination of particularly advantageous defensive territory and a particularly well-trained local population.

Switzerland has constantly been on the alert to enforce her neutrality to the letter, whenever war has threatened her borders. During the Hundred Days the Swiss government

¹ Descamps, Ed., 400.

² Kleen, I. 90.

³ Bonfils, 213.

informed the Allied Powers that it was prepared to protect its neutrality; and, although this position was compromised for the time being by Switzerland's adherence to the Last Coalition, this step was later bemoaned by her statesmen as an act of unjustifiable weakness. In 1821 General Jomini wrote, "The question of Swiss neutrality is that of its very existence. It is necessary that Switzerland have not only the will but also the ability to defend it."¹ With the outbreak of each successive war near her borders, Switzerland has issued a formal declaration of her determination to remain neutral, and to cause their neutrality to be respected by use, if necessary, of the entire military forces at its disposal.

At the outbreak of the Franco-Prussian War there was much apprehension that the French would endeavor to invade Southern Germany through Switzerland, thereby turning the flank of the Prussian line of fortresses along the Rhine.² On July 16, 1870, the Federal Council addressed to the powers identical notes declaring the neutrality of Switzerland in the impending struggle; and the same day ordered a levy of 40,000 men to garrison the frontiers of Schaffhausen, through which runs the natural passage between the belligerent territories. The following day the French government replied with a promise to respect the neutrality; and on the 21st of the month a telegram to the same effect was received from Bismarck. The efficiency of the Swiss military system was shown by the fact that, within forty-eight hours from the time the call for troops was issued, the 40,000 had gathered from all parts of Switzer-

¹ Pictet, E., 410.

² The advantage of this plan from a military point of view has since been carefully worked out by a British strategist in an unsigned article entitled *Swiss Neutrality*, *Fort. Rev.*, N. S. 46, (1899), 20f.

land, and were in occupation of the various positions assigned them.¹

The Swiss army has also played an important part on other occasions of threatened aggressions. One of the most notable of these was the Neuchatel Affair of 1856. The canton which bears this name is situated on the northern border of Switzerland, at the source of the Rhine river; and was, during the Middle Ages, under the sovereignty of a branch of the Bourbon family. It later allied itself with the Swiss canton of Berne, and, in 1815, was included as a new canton of the Swiss Confederation. Previously, however, the Bourbon line of rulers had died out, and the throne had fallen to a branch of the Hohenzollerns. The nominal claims of the latter were recognized even though the territory was a part of the Confederation. In 1856 a revolution broke out in the canton, as a result of which the local constitution was changed to a republican form, and the Prussian overlordship was disavowed. The King of Prussia threatened to uphold the claims of his House by force. As a reply to this threat Swiss troops were sent to occupy the territory and to guard the Rhine frontier. A Conference of the Powers took the matter in charge before any blood was shed, and eventually the Prussian King renounced forever for his family their sovereign rights in Neuchatel.²

So jealous has the Swiss government been of its right to manage its own military affairs that, in 1900, it refused to sign the Hague Convention relating to the Laws of War on Land, holding that the terms of the Convention would interfere with the *levée en masse*, on which the Swiss depend largely for self-defense.³ While this interpretation is hardly justifiable, it shows the determination of Switzerland to maintain its strict neutrality and to avoid any alliances which would cripple its power to defend it. Indeed, its en-

¹ Bury, S., 639; Hertslet, III, 1878f.

² Hertslet, II, 1317.

³ Renault, L., *La Convention de la Haye sur la guerre et l'attitude de la Suisse*, R. D. I. P., VIII, (1901), 6.

ture conduct since 1815 has been so conformable to the regime of permanent neutrality that it would be difficult to conceive of a more thorough fulfillment of that part.

When, in 1815, Belgium, Holland and Luxemburg were united under the crown of the House of Orange, the Four Allied Powers had in mind a single purpose, to furnish a check to the expansion of France. Feeling that this purpose could best be accomplished by putting the new state in a first-class position of defense, they agreed that the sums collected from the French in the form of penalties should be used to fortify the Netherlands, the Rhine Valley and Savoy; and by the Protocol of a Conference of November 21, 1815, it was agreed that "the British government should, conjointly with that of the Netherlands, determine upon the special employment of the sums destined for fortifying the latter country."¹ At the Conference of Aix-la-chapelle, three years later, a military Protocol was signed between the Four Powers and the Netherlands, by which a certain number of fortresses in the Netherlands were to be garrisoned by English and Prussian troops, and the King of the Netherlands was to receive 60,000,000 francs for the construction and repair of the fortresses.

Affairs continued under this regime until, in 1831, the permanent separation of Holland and Belgium was accepted by the Powers. France joined heartily in the acts of the Conference of London, and, as a result of her cooperation, the Four Powers laid aside their suspicions, and on April 17 joined in a declaration to the effect that since the permanent neutrality of Belgium should give it security certain of its forts might be demolished.² Provision was made for the continued maintenance of others, by a new Convention

¹ Hertzslet, I, 412f.

² *Ibid.*, II, 856.

of the Fortresses, signed on the 14th of the following December.¹

It seems that a secret article of this same Convention stipulated that the King of the Belgians should occupy the same position toward the Four Powers as had previously the King of the Netherlands, except for the obligations arising from Belgium's status as a permanent neutral; and, as a result, it was his duty to concert with them on measures regarding the preservation of the forts.² But the Secret Article was never ratified by the Belgian Parliament, a step indispensable for giving it legal standing, according to Article LXVIII of the Constitution; and when France raised serious objections to the terms of the Convention, the plenipotentiaries of the Four Powers declared, the 23rd of January, 1832, that the stipulations of the 14th of December should be understood only under the reservation of the full and complete sovereignty of the King of the Belgians over the forts.³ Since the entire Convention of the Fortresses had been a virtual restriction upon the sovereignty of Belgium, this proclamation on January 23rd was regarded by Belgian publicists as annulling the former, and, hence, as removing all such restrictions.⁴ At any rate, the Belgian government, with the tacit consent of the powers, destroyed the very forts which were chosen for preservation, while those ordered demolished have been maintained.

In the light of these facts we agree with Piccioni that there is at the present time no military servitude on Belgium. For all practical purposes the military freedom of Belgium and Switzerland from outside control is identical. But as a practical problem the matter of self-defense, is for Belgium, far from simple. The territorial configuration is not

¹ *Ibid.*, 881.

² Woeste, 78f.

³ *Ibid.*, 80.

⁴ See in addition to the work above cited, Banning, *La defense de la Belgique*, and Piccioni, 48.

of a nature to make military defense easy. There are no natural defensive boundaries. The frontiers are the work of the Congress of Vienna and the Conference of London, and are highly artificial. To increase the difficulty of the task of erecting sufficient fortifications for the protection of the country, the strongholds on the east, Maestricht and Luxemburg have been neutralized and the forts demolished. After a careful consideration of the problem of self-defense Baron Descamps declares, "We are compelled to remark that the line traced by politics has weakened the natural strategic line of defense of the country at the three extremities of the triangle of which it is composed."¹ The Belgian military problem is, however, from the nature of its legal position in the international world, purely defensive, and has but the single aim of safeguarding the independence and permanent neutrality of the state.

The decision as to the appropriate means of defense has ever been considered, both by the Belgians and by their neighbors, as purely a national matter. As early as 1859 it had been shown that the forts then in existence were utterly inadequate to provide for the self-defense of the country, and Belgium set about to create a new series of defenses.² But these too were eventually found to be insufficient to repel the attack of modern artillery, and were rebuilt.

It is worthy of note that when the Belgian government set about the reconstruction of these forts there were objections both in Germany and France, not on the ground that Belgium was exceeding its rights in rebuilding, but rather that the rebuilding and fortifying would result to a disadvantage to these powers.³ It was set forth by General Brialmont, the Belgian strategist to whom was intrusted the task of providing the defense, that with these

¹ Descamps, Ed., 405.

² Woeste, 68.

³ *Ibid.*, 70.

places strongly garrisoned and a free army of 70,000 in the field, the opposition which an invader would encounter would be sufficient to deter him from trespassing on Belgian soil.¹ His proposal that the Belgian army should be kept of sufficient strength to hold the balance of power between its two powerful neighbors was popular in Belgium during the 80's and early 90's; but the rapid increase in German military strength, without a corresponding development in France, led General Brassine, the Minister of War in 1894, to advocate its abandonment, and the system of defense was placed upon the firmer ground of an international obligation to do all in the state's power to repel any encroachment upon its territory from hostile forces.

When the Franco-Prussian War broke out there was no hesitation on the part of the Belgian government as to the proper course to be pursued. The Chambers were not in session at the moment, but the government, on its own responsibility, took measures to insure strict neutrality. In these efforts it was loyally supported by Great Britain. In a speech to which Englishmen have since had occasion to point with pride, Lord John Russell declared, on August 2, 1870, before the House of Lords, "Our obligations as to Belgium are most sacred. We have accepted these obligations individually, as well as conjointly with the other powers. We have not here to choose between many roads. We have to follow a single path and this path is that of honor. We are bound to defend Belgium."² Accordingly identical treaties were negotiated between Great Britain and the warring powers, by which each of the latter bound itself anew to respect the neutrality of Belgium, as long as it was respected by the other, Great Britain at the same time declaring her intention to join in the hostilities on the side of the defense, should either party fail

¹ Descamps, *Ed.*, 414f.

² *Chronique du droit international*, R. D. I., II, (1870), 698.

to respect its obligations toward Belgium.¹ Shortly afterward the Belgian Chambers passed legislation prohibiting the export or transit of arms of any kind, munitions of war, military equipment, horses, hay, grain, boats, or any supplies that might be of use to the armies of the belligerents.² Later the passage over Belgian territory of sick or wounded soldiers from either the French or the German armies was forbidden.³ Eventually, however, a considerable number of soldiers of both parties were interned on Belgian soil.

When, in 1867, Luxemburg was made permanently neutral, an international servitude was placed upon it, for the fortress was dismantled upon the pretext that the establishment of permanent neutrality rendered defenses unnecessary.⁴ It was, however, expressly asserted by the Belgian plenipotentiary at the Conference, that this statement should not be construed to imply any restrictions upon the rights of other permanent neutrals, with regard to their forts and other means of defense; and this assertion received the unanimous support of the plenipotentiaries of the powers.⁵ Not only was the fortress of Luxemburg demolished, but it was expressly stipulated that it should never be rebuilt; while the standing army which the Grand Duke was permitted to maintain was limited to the number necessary for police duties. A tacit agreement established the number at 300. Thus the servitude is not of a temporary nature, such as the mere reduction of the fortress would have been; but it is a permanent restriction on the internal sovereignty of the state.

In such circumstances it is important to note that the state is absolutely relieved from the duty of enforcing its neutrality. Indeed, this can but follow from the establishment of

¹ Hertslet, III, 1886ff; 1889ff.

² *Chronique*, 704.

³ *Ibid.*, 708f.

⁴ Hertslet, III, 1803.

⁵ Nys, *Notes*, R. D. I., (1901), 26.

so "radical" a neutrality. Luxemburg is relieved of the duty to make any attempt to cause its neutrality to be respected by force of arms. It is freed, in time of war, from those perilous duties which devolve on Switzerland and Belgium; and, in time of peace, from the heavy military expenses which those states bear. It is bound to rely solely on its right of appeal to its guarantors for protection.

The course pursued by Luxemburg during the Franco-Prussian War was fraught with danger from both sides. Its railroads were freely used by the Prussians to transport wounded soldiers.¹ On December 30, 1870, Bismarck sent a note to the Grand-Ducal government in which he accused Luxemburg of failing to cause its neutrality to be respected, and declared that it would no longer be respected by Prussia.² In fact, there had been no effort on the part of the Duchy to intern the French soldiers who had taken refuge there; and the latter had been allowed to pass freely back to their own country. Servais, who was at the time the Minister of State of Luxemburg, replied to Bismarck's note by referring to the fact that the treaty of 1867 had reduced the forces of the Grand Duchy to a minimum, and had freed that country from all obligations resting on force.³ In this interpretation he was supported by Great Britain and Austria, and Bismarck let the matter drop. This was the general attitude taken again by Luxemburg when, in 1914, its territory was unceremoniously invaded by the German troops on the way to France. Having no military forces on which to depend, the government of Luxemburg had to content itself with issuing vigorous protests against the violation of its neutrality.

Closely affiliated with the right of a permanent neutral to provide for its own defense is the question whether its neighbors may build fortifications within their own territory along

¹ Eyschen, *R. D. I.*, (1899), 39.

² Hertzel, III, 1901f.

³ Servais, 175.

the neutralized border. It is difficult to formulate a legal right on the neutral's part to protest such acts. If this privilege were denied the neighboring powers it would amount to a greater restriction on their internal sovereignty than, it is generally conceded, rests on the neutralized state itself. Furthermore the neighboring power could lay claim to a purely defensive character for these works, inasmuch as they do not necessarily carry a menace to the neutrality of the state in question.¹ The fact that this right has been denied in specific instances implies its existence in normal circumstances. In 1815 the Austrians were forbidden to fortify Podgorce, near the border of the Republic of Cracow.² Article III of the Treaty of Paris, of November 20, of the same year, forbade the erection of forts at Hüningen, or at any other point within three leagues of Basle.³ In 1862 France and Switzerland by convention mutually agreed not to fortify the Valley of Dappes.⁴ On the other hand, Article XC of the Final Act of the Congress of Vienna secured to the King of Sardinia full freedom to build defenses along the Swiss frontier of Savoy.⁵ But this fact only strengthens our contention. Under normal circumstances this right would have belonged to Sardinia without question, but, since the territories on this frontier had been declared to share the neutrality of Switzerland,⁶ confusion as to the right might have arisen.

Question as to the effect of permanent neutrality on the internal sovereignty of a neutralized state may arise in case of a constitutional change. When the powers, at Vienna, recognized the neutrality of Switzerland, they required that the Federal Diet should adopt a constitution which would insure domestic tranquillity. A constitution was accordingly produced, and received their sanction. Switzerland, under this constitution, was a loose Confederation of twenty-two cantons, each of which was a miniature republic,

¹ Despagnet, 183.

² Hertzslet, I, 219.

³ *Ibid.*, 246.

⁴ *Ibid.*, II, 15266.

⁵ *Ibid.*, I, 261.

⁶ *Ibid.*, 262.

over which the Federal Diet had only a very limited control. For a generation a centralizing spirit grew among the Swiss people, and, in 1847, what is known as the Sonderbund War broke out. Seven conservative cantons stood for the constitution of 1815, the Confederation, and the old regime; fifteen were in favor of a revised constitution, and a strongly centralized government. The war lasted for five weeks, at the end of which time the Centralist party was triumphant. At the outbreak of hostilities the Conservative governments of Europe proposed interference on the ground that the government of Switzerland under the constitution of 1815 was guaranteed by the Final Act of the Congress of Vienna. Guizot, the French Foreign Minister of Louis Philippe, proposed a collective intervention, in order to enforce respect for cantonal sovereignty.¹ His proposal met with favor in Austria and Prussia, but the British government refused to sanction it. The development of a strong liberal party in France prevented any definite action on her part, and so interference was delayed until the Federal authorities had put down the internal opposition by force. The revolutions of the following year drew the attention of Europe from Swiss affairs, and the statesmen of that country seized the opportunity to modify to a considerable extent their constitution. By the new document the policy of permanent neutrality in Switzerland was elevated to a maxim of State.² In 1874 the constitution was again revised, and we may conclude that it is a generally accepted principle of the public law of Europe that a permanently neutral state may change its constitution at pleasure, provided that nothing shall be omitted or inserted which might be construed to alter its international status.³

The right of Belgium to change its constitution is equally

¹ Guizot, M., *Memoires pour servir a l'histoire de mon temps*, (8 vols., Paris and Leipsic, 1864), VIII.

² V. the Federal Constitution of 1848, Articles LXXIV, section 6, and LXXXV, section 9; that of 1874, Article LXXV, sections 6 and 12.

incontestable. Article IX of the Treaty of the XVIII Articles expressly declared that the powers had no desire to interfere in the internal affairs of Belgium;¹ and, although this clause is not found in the final treaty, it is understood as a corollary of the independence of the state, which that treaty expressly guarantees. It is true that the powers at the Conference of London decided for a monarchical form of government, and even made a deliberate choice of a King in the person of Prince Leopold, but this was with the sole purpose of checking any ideas which might be left in Western Europe as a heritage of the French Revolution, at the same time making it impossible for a French Prince to occupy the throne; and should not be construed as implying that a monarchical form of government is enforced upon Belgium by the terms of her neutralization. As to the hypothetical question whether or not Belgium would have the right to change its government from a monarchy to a republic without the consent of the guaranteeing powers, even so thorough a patriot as Baron Descamps is unwilling to commit himself. He declares that while the powers formally denied any desire to interfere with the internal affairs of Belgium, still, on so serious a matter as such a change would be, it would be well to remember that Belgium's position is not exactly the same as that of other countries.² There have, however, been several revisions of the Belgian constitution, the last of which, in 1893, was particularly thorough; yet there has never been any interference on the part of the guarantors.³

The question of constitutional revision has played no part in the affairs of Luxemburg since 1867. There have been, on the other hand, dynastic changes of an interesting character. Article I of the Treaty of 1867 maintained for Lux-

¹ Nys, *Notes*, 31; Piccioni, 77; Descamps, *Em.*, 209.

² Descamps, *Ed.*, 452.

³ *Ibid.*, 449.

emburg the Salic law.¹ This was in accordance with a Nassau Family Compact, dating from 1783, and sanctioned by the Treaty of Vienna, 1815.² The importance of the re-statement of the law in 1867 lay in the fact that Prussia was laying claim to the heirship of every plot of earth in Germany, the direct line of rulers of which had become extinct. As Luxemburg had been a part of the Germanic Confederation, there was apprehension that it too might be absorbed.³ Consequently, when William, King of Holland and Grand Duke of Luxemburg, died in 1890, there were some misgivings as to the future of the Grand-Ducal throne. Holland went without question to his daughter Wilhelmina. Luxemburg passed to Adolph of Nassau, the agnate heir, and thus the personal union of Holland and Luxemburg was brought to a close. Upon default of a male heir, in 1912, the title passed to the Grand-Duchess Marie Adelaide.

The Constitutional changes of the Congo Free State have been so many, and of so complex a character that we shall defer the study of them to a later chapter.

What is the duty of permanently neutral states with regard to the internment of military refugees? Here the rules of simple neutrality prevail. It goes without saying that the neutral state must grant impartial treatment to refugees from both parties in the war. The aid or shelter must not be of such a nature as to augment the forces of either.⁴ It usually consists in imposing a residence at a certain place within the neutralized territory. Ernest Nys finds the origin of this custom in the Polish revolution of 1831, when Prussia interned two corps of the Polish army which had crossed the border to escape from the Russians.⁵ The example was

¹ Hertael, III, 1803.

² *Ibid.*, I, 253.

³ Servais, 156.

⁴ Bonfils, 706.

⁵ Nys, *Notes*, 26f.

followed by Switzerland in the Austro-Italian War of 1859; and again, in 1871, a French army of some 85,000 men, with 10,000 horses, entered Swiss territory and was disarmed. According to the rules for internment they were released at the close of the war with all their arms and equipment, the French government paying the Swiss 11,000,000 francs to cover the expense incurred.¹ The same policy was followed by the Belgian government during the latter part of the war.

Questions of grave moment have arisen at different times with regard to the right of powers guaranteeing a permanent neutrality to interfere in its internal affairs to protect themselves against plots and disturbances of a nature to threaten their own domestic tranquillity. The permanent neutrals, Switzerland in particular, have always insisted on their right to grant asylum to whomever they would; and this contention is supported by the principles of law and justice. Indeed, no state could be regarded as independent, if compelled to deal with propagandists according to the dictates of foreign powers.² We have seen how the right of asylum was denied to the Republic of Cracow, and with what disastrous results. Two questions are involved in the problem of asylum. First, has every state the right to grant such asylum? and, secondly, has every refugee the right to demand it? Is every state bound to grant asylum to a refugee, if it is demanded? Says Rivier, "The right of asylum is not the right of an alien to find asylum in the country, but rather a right which belongs to a state, by virtue of its very independence, to grant asylum to whomsoever it wishes; to receive, if it sees fit, the alien, the fugitive, the proscribed. The state has the right of asylum; there is, in general, no obligation to furnish it."³

At first glance it would seem that the laws of humanity de-

¹ Martens, *Nouveau recueil*, XIX, 639; Hertlet, III, 19071.

² Nys, *Notes*, 36.

³ Rivier, *Principes*, I, 314.

mand for the political refugee the right of asylum from any state whose territories he may reach. There are, however, certain rules of national and international order that must be taken into consideration. Furthermore, the right of asylum, if granted, may be instantly withdrawn if misused by the refugee enjoying it. It may be said that all states are under the obligation to prevent by due diligence their territory from becoming centers of revolutionary movements against the peace and order of other states.¹ It was upon this ground that Guizot eventually placed his appeal to join in checking the centralizing movement in Switzerland in 1847. He feared that if Switzerland became a Federal State it would become a center of agitation against its neighbors, and of revolutionary propaganda which would compromise their repose.²

Certain incidents occurred in Switzerland during the late 80's in which the question of asylum was involved. In 1887 there appeared at Zurich an anarchist journal under the interesting caption of *Der Rothe Teufel*, in which attacks were made upon the royal family and the imperial government of Germany.³ Investigation showed that the sheet was printed at the same establishment as the socialistic organ *Sozial Demokrat*, although the proprietors of the latter disavowed the anarchist publication. Both papers were the work of German *émigrés* in Switzerland. An inquiry also brought out the fact that certain of the most violent of the anarchists of Zurich were no other than paid secret agents of the German police. The leaders, who were put under arrest, were, with a single exception, German citizens.⁴ A confidential complaint was about to be made to the German government, when it became known that Captain Fischer, of the Zurich police, had made the whole mat-

¹ Hagerup, 595.

² Guizot, VIII, 463.

³ *Journal du droit international privé*, XVI, (1889), 423.

⁴ *Ibid.*, 424.

ter public through a letter to two of the socialist deputies; and a part of the letter was read in the Reichstag, on January 27, 1888.¹ Called to question on the subject, Puttkamer, the Prussian Minister of the Interior, admitted that the German police supported in Switzerland instruments for the surveillance of revolutionary anarchists.² The Swiss Federal government now took the matter in hand. While disavowing the act of Captain Fischer in making the circumstances public, it proposed to the National Council the creation of a Bureau of the Federal Police, which should be charged with the surveillance of foreign refugees. The words of M. Droz, the chief of the Swiss Department of Foreign Affairs, in a speech before the National Council, March 20, 1888, are worthy of note.

"In international law it is a fundamental truth that each sovereign state is master of its own internal affairs. If it is convenient for others to have monarchical institutions, we have no more right to interfere with their affairs than they may pretend to mix with ours. . . . But foreigners who come upon our soil ought to know that they contract certain duties toward us. . . . If we give them free use of the liberty of the press and of assembly,—those political liberties which are guaranteed to the Swiss people by the constitution, it is on condition that they prove themselves worthy; if not, we have the right and the duty to apply to them the laws of the country. These laws . . . provide . . . for the expulsion of foreigners who compromise the internal or the external security of the Confederation."³

Ehrenburg, the leader of the conspirators, made his escape; Schroeder, a naturalized Swiss, was imprisoned; while the others, along with six Germans who were officially connected with the socialist publications, were expelled.⁴ The German government failed to take warning, and early in the following year the German Police agent at Mulhausen,

¹ *Ibid.*, 427ff.

² *Ibid.*, 430.

³ Given in Descamps, Ed., 460.

⁴ *Journal du droit international privé*, XVI, (1889), 425, note.

one Wohlgemuth, hired a Bavarian *émigré*, a tailor named Lutz, to stir up anarchist agitation in Basle.¹ Having discovered the plot and secured the correspondence which had passed between the two, the Federal agents seized an opportunity to arrest both on Swiss soil. The German press protested violently against the imprisonment of their police officer.² The Federal Council ordered his expulsion on the grounds cited in the speech of Droz; and later Lutz was subjected to the same penalty.

The German international lawyers endeavored to establish the legal validity of the acts of their police agents, denying, as did the government itself, that they had been agitators; but with the correspondence in plain evidence there was no question, in reality, of Wohlgemuth's guilt.³ Had his errand been successful, the result would have imperilled the internal security of Switzerland. The claims of the German press that Wohlgemuth was innocent, and therefore should be immediately be released, necessitated a trial in order that Switzerland might justify herself against the charges of hasty action. Throughout the entire transaction the Swiss government stood on a firm legal footing. June 19, 1899, von Bülow, the German Minister at Bern, informed the Federal Council that Germany was reserving to herself the right to take any measures which it thought advisable; while the press kept making dire threats of reprisal.⁴ Italy and Austria inclined to the support of Germany, as they had both been troubled by the presence of the "hot-bed of Republicanism" so near their borders. On the other hand, the Germans living in Switzerland, in number over 100,000, heartily supported the latter government. The question was eventually allowed to drop, but the principles of law prevailed, and it may be said without danger of contradiction that the permanently neutral state is master

¹ *Ibid.*, 418.

² *Ibid.*, 221.

³ *Ibid.*, 432.

⁴ *Ibid.*, 436.

as to its right of asylum, and it may grant or withhold this privilege to foreigners at its pleasure.

Very closely allied is the question of the so-called constitutional liberties of individuals, namely, freedom of speech, of the press, and of assemblage. These very questions were involved, to some extent, in the Wohlgemuth Affair. There exist, in the case of permanent neutrals, no restrictions other than those placed by international law upon all states.¹ Certain precautions are politically expedient to all small states. We take occasion to refer briefly to a few historical incidents. In 1856 Count Walewski, the French Foreign Minister, complained to the plenipotentiaries at the Congress of Paris, that every day there were being published in Belgium attacks upon the government of Louis Napoleon.² The Belgian government was competent to cope with the situation. Again, during the course of the Franco-Prussian War, there were frequent complaints from German sources of the sympathy of the Belgian press for France. Following the custom among neutrals the Belgian government urged caution on the part of the editors of papers published within its territory to observe a strict impartiality. On February 3, 1875, Bismarck, who had involved Germany in the Kulturkampf, made representations to the government at Brussels against the Catholic press for its violent attacks on the Prussian government. The Belgian Chambers condemned by a public vote such action on the part of the press and the clergy.³

The question of the freedom of the press in Switzerland has given rise to several disputes between that state and its neighbors. We have already noted her vigorous action in the Wohlgemuth Affair. Another interesting case developed in 1898, when, with the outbreak of domestic difficulties in many of the cities of Northern Italy, a sympathetic

¹ Funck-Brentano and Sorel, 219.

² Nys, *Notes*, 36.

³ Eyschen, 41.

attitude was adopted by the Italians living in Switzerland.¹ Meetings were held in various Swiss cities; protests were voted against the measures of repression taken by the Italian government; Italians were urged to return to Italy to help their oppressed brothers; and many openly declared their determination to go. The Swiss government took the matter in charge, and eventually gave 189 conspirators over to the Italian authorities. Thus the government, while in theory inclined toward the broadest toleration, was forced to admit that in practice it became its duty to see that foreigners should show themselves worthy of the political liberty which was guaranteed them by the Swiss people in their constitution.

An instance of a permanently neutral state regulating its internal affairs out of deference to the wishes of its guaranteeing neighbors as a matter of policy is found in the case of a proposed Jesuit college at Luxemburg. This town had been the seat of a thriving institution of learning under Jesuit leadership prior to the Revolution of 1789.² When, following the Conference of London of 1867, the military institutions were demolished and their restoration interdicted, it was thought to restore in their place the ancient seat of learning. The proposal met with some favor at first, but when it became evident that the Jesuits, who were under the ban in both France and Germany, were destined to assume the leadership of the faculty, strenuous objections arose in both of those countries. Consequently, in spite of the devotion of the majority of the Luxemburgers to Catholicism, the proposition was abandoned.³

¹ *Chronique des fautes internationales*, R. D. I. P., II, (1898), 480f.

² Wampach, 206.

³ Eyschen, 41.

CHAPTER X

PERMANENT NEUTRALITY AND INTERNATIONAL RELATIONS

IN this chapter we shall discuss the effect of the creation of a permanent neutrality on the freedom of action of the neutralized state in international affairs. We have established as a general rule for permanent neutrals the obligation to refrain from all offensive alliances, and from international agreements of such a nature as to involve them in unfriendly or hostile relations with their neighbors. We have shown that the purpose for which the three permanent neutralities of Europe were created was to maintain the Balance of Power on that continent. From this it evolves that the neutralized state is under obligation to its guarantors sedulously to avoid any international relations which may result in a disturbance of that equilibrium. It should be equally on guard lest an apparent advantage to be gained influence it to take the initiative in such a move, or an inducement offered by another power cause it to turn from the path of strict and impartial neutrality.

It is obvious from the general rule just stated that any action on the part of the neutralized state which would bring about the termination of its existence as an independent state is prohibited. It may not enter into a Real Union with another state, nor become part of a Confederation, or of a Federation, nor yet may it become a Protectorate, since any one of these relations would bring it into closer relation to the state with which it is allied than would be consistent with its duties to its guarantors.¹ On the other hand, a Personal Union between a permanent neutral and another state is permissible, and has existed between neutral states

¹ Despagnet, 182; Piccioni, 88.

and their neighbors in no fewer than three instances. In all cases of union of this kind there should be constant vigilance on the part of the neutralized state to prevent a fusion of interests. Such a relationship should receive the sanction of the guaranteeing powers; and the consent of the latter must be obtained before any change therein can be legally effected, unless, as was the case with the Luxemburg succession, provision has been made for such a change beforehand.

The establishment of a customs union between a permanently neutral state and one of its neighbors has generally been condemned on political grounds, although the authorities do not agree as to its legal interdiction. When two or more states enter into a customs union they mutually agree to remove all customs lines between them, and at the same time to adopt for their other borders a uniform tariff.¹ It is obvious that such an arrangement is purely of an economic nature. It has no relation to warlike alliances, which are legally interdicted to permanent neutrals. Refusal on the part of a permanent neutral to enter, or on the part of its guarantors to sanction, such an arrangement, is brought about through a desire for precaution, since the effect of the establishment of a customs union must always be one of consolidation and fusion of interests. During times of peace the economic interests of the two peoples become practically one; there is constant interchange of views, and repeated contact among the people. With the exchange of ideas, as well as of goods, there inevitably comes a modification of national customs. The internal policy of each state of the union reacts upon that of the other.² In such a case the process very easily becomes one of absorption, or at least of subjection of the weaker power to the hegemony of the stronger. The most striking example of this is found in the case of Germany. Of the many states which, during

¹ Descamps, Ed., 394.

² Funck-Brenanto and Sorel, 169.

the last century, entered into a customs union with Prussia, only Luxemburg has succeeded in maintaining its independence. Thus the customs union becomes in time an alliance which involves, not merely economic affairs of a peaceful nature, but even warlike measures. Let a single member of the customs union become involved in war and the whole economic system of the group is upset. Business and exchange are subjected to difficulties but slightly less serious than would result from participation in the war by all. Foreseeing such an event, the state joined in the union would undoubtedly enter into agreements for the mutual avoidance of war if practicable, and for mutual protection in case one becomes involved in war, agreements that would amount to an alliance of a nature forbidden to permanent neutrals.¹ A neutral would thus find itself in an international situation from which it could only with difficulty disengage itself.

When Luxemburg was made permanently neutral, in 1867, the question arose whether its new status involved the discontinuance of its economic relations with Germany, for it had been a member of the Zollverein since 1842. The continuance of the economic relations of the two countries was purely of a political nature. Certain circumstances made it well-nigh impossible that there should be any change at the time. In the first place, Prussia, by yielding its claim to the right to garrison the fortress of Luxemburg, was showing a spirit quite out of accord with its general policy of aggression, and had there been an insistence upon the severance of the economic ties as well, its objections would have been sufficiently strong to endanger the work of the Conference. In the second place, membership in the Zollverein was vital to the prosperity of the Grand Duchy itself. By it the economic conditions of Luxemburg had been transformed. New industries had come into existence which would have been ruined had the access of their pro-

¹ *Ibid.*, 168.

ducts to Germany been closed.¹ The tiny state possesses less than 1,000 square miles of territory, and is barely self-supporting. Furthermore, the terms of the union safeguard the national self-respect of the people. The Director of the Customs Service is a German, but those who serve under him are chosen from the native population; while the arrangements are sanctioned by treaty for a definite period of time, and can be severed by either party upon two years' notice prior to the expiration of the agreement.²

The attitude of the powers toward Luxemburg in 1867 was the exact opposite of that taken by them in 1841, when there was talk of a customs union between France and Belgium. The matter became the subject of four Conferences between the two countries.³ The chief obstacle seemed to be the refusal of the Belgians to admit French customs officers into their cities, for they held that this would be a restriction both on their independence and their neutrality. Guizot was laboring under the fear that Belgians, if their proposals were rejected by France, would turn to Prussia and gain admittance to the Zollverein, as Luxemburg had just done.⁴ The textile industry of England was finding ready markets for its products in France, much to the dissatisfaction of the Belgians who were engaged in the same industry. Not only were British interests endangered by the proposed customs union, but they had already been attacked by a commercial treaty between France and Belgium, concluded July 16, 1842, by which all duties were removed on thread and linen textiles brought from Belgium to France, while the former adopted on its frontiers the same tariff on these articles as was paid on the French border. This was a long step toward a customs union.

¹ Wampach, 254f.

² Servais, 176, and Despagnet, 179, express doubt as to the legality of the position of Luxemburg.

³ Guizot, VII, 276.

⁴ *Ibid.*, 278.

Lively protests were issued by the British Foreign Office. Lord Aberdeen requested the Courts of Berlin, Vienna and St. Petersburg to join him against a measure which presented a genuine danger for the European equilibrium. Guizot, however, refused to drop his plans, until doubts arose as to King Leopold's sincerity in the negotiations. Metternich, the shrewd Austrian diplomat, wrote in the following strain: "No country deliberately lets itself be devoured by another, and in such transactions the smaller is always the one which holds itself most on its guard. . . . I repeat that I attach very little importance to the whole project."¹ And again, "I ask myself if King Leopold ever had a real serious intention to conclude such a treaty, and if it is not more probable that he advanced the project, which he knew could not be executed, . . . to please his father-in-law, the French nation, and the French party in Belgium, and the national sentiment which seeks an outlet for the excess of Belgian products." Guizot himself declared later, "I am strongly tempted to believe that Metternich was right, and that King Leopold never sincerely pursued the customs union project nor counted on its success."² The importance of the formation of customs unions between neighboring states has been decidedly diminished by the introduction into modern treaties of the most favored nation clause.

A relationship between a permanently neutral state and one of its neighbors whereby the former is bound to defend the latter in case of war being absolutely prohibited, not only are ordinary treaties of defensive alliance interdicted, but also the assuming of protectorates, and the establishment of scattered colonies in other parts of the world. The pe-

¹ *Ibid.*, VI, 293f.

² *Ibid.*, 294.

culiar case of Belgium and the Congo State is an apparent exception to this rule, but here the circumstances were altered by the facts that the territory which became a Belgian colony was already enjoying the status of conventional permanent neutrality, and was already joined to Belgium in Personal Union. The force of the rule becomes clear if we suggest the permanent neutralization of Holland. From its location in Europe and its relations as a European state it would seem to merit that status as well as do Switzerland, Belgium and Luxemburg. But what would be the status of its colonial empire? A permanent neutrality for the home country which did not extend to the colonies would be an anomaly. On the other hand, the Powers would be loath to guarantee the neutrality of the territories over which Dutch sovereignty has been extended, scattered as they are through America and the East Indies. A permanently neutral state is not even free to guarantee the neutrality of another, for this obligation might eventually involve it in hostilities, should the state to whom the guarantee is given be unjustly attacked. Thus Belgium was expressly relieved from guaranteeing the neutrality of Luxemburg; and, at the Conference of Berlin in 1885, the Belgian plenipotentiary carefully stated that his accession to the treaty which created the Congo Free State was given with such reservations as might be necessary to safeguard Belgium's position as a permanent neutral. It is interesting to note that Switzerland entered the League of Nations in 1920 with the reservations necessarily involved in its permanent neutrality.

There is, however some variation of opinion as to whether a permanently neutral state may enter a limited defensive alliance. Pradier-Fodéré,¹ Despagnet,² Piccioni,³ Hagerup⁴ and Kleen⁵ are in favor of the absolute interdiction of all defensive alliances. Other authorities do not hold such an

¹ Pradier-Fodéré, II, 630.

² Despagnet, 180.

³ Piccioni, 104.

⁴ Hagerup, 591.

⁵ Kleen, I, 89.

extreme view. For instance, we find Rivier expressing the opinion that the permanently neutral state may conclude defensive alliances which do not place it under obligation to defend its ally, but which will obligate the ally to defend it.¹ Nys supports this hypothesis,² as also does Wheaton,³ who follows Arendt⁴ very closely on this point. Bonfils would permit a defensive alliance on the part of the neutral, but only after it has been attacked.⁵ Surely no one would attack the validity of such an agreement. In fact, it is the positive duty of the permanently neutral state, in case its neutrality is violated, to ally itself with its guarantors, so far as they will come to its assistance.

In these days of rapid mobilization, to deny a permanent neutral the right of defensive alliance until after an attack has been made upon it, is the equivalent of absolute interdiction of the right. If an outside power comes to the neutral's rescue under such circumstances, it will be on the general grounds of humanity, or of mutual understandings previously effected between them. A treaty concluded between a neutral and its neighbor after the attack upon the former has been delivered may be the excuse for, but it will never be the cause of, the intervention.

For a permanently neutral state to enter, in time of peace, into a formal defensive alliance with one of its guarantors, would be, in theory at least utterly useless, since the guarantors are already pledged to cause the neutrality to be respected. Such an act would give just grounds for offense to the other guarantors of the neutrality.

¹ Rivier, *Principes*, II, 60.

² Nys, *Notes*, 271.

³ Wheaton, Dana's edition, 516.

⁴ Arendt, *Essai sur la neutralité de la Belgique*, (Brussels, 1845),

⁵ Bonfils, 215.

In dealing with this problem, as is so often the case in international relations, the old adage that "circumstances alter cases" applies with special force. As Baron Descamps says, "There are some perfect arguments in theory which do not have the same value to practice. Circumstances of a certain order may certainly counsel it not to adventure on a way which, branching at a given moment, may leave the little state the choice between ruin and the abandonment of its independent nationality."¹ The thesis of Kleen and the rigorist school is hardly reconcilable with the duty of the neutralized state to provide for its own defense in every way compatible with its international status. However, it can not be admitted that a permanent neutral may under any circumstances, send its forces outside of its own territory to defend an ally. It will, therefore best serve its own interests, and the interests of the family of nations, by avoiding all grounds for complaint. As Rolin-Jaequemyns, one of Belgium's wisest publicists, says, "It depends entirely on the tact and the prudence of the neutral governments to use this right only in the measure of necessity, and in a manner not to arouse any legitimate jealousy."²

No writer has given more careful attention to this subject than has Baron Descamps, and, in our opinion, none has arrived at more accurate and practical conclusions. Denying, as a matter of course, the right of a neutralized state to form offensive alliances, to make agreements whereby a part of its territory may be occupied by another power in case of hostilities, or to join in a reciprocal defensive alliance by the terms of which it would be required to defend its ally by force of arms,³ he adds, "If Belgium may not assume the

¹ Descamps, Ed., 389.

² Rolin-Jaequemyns, *Les alliances européennes au point de vue du droit international*, R. D. I., XX, (1888), 27.

³ Descamps, Ed., 367f.

defense of others in order to obtain, in return, a better defense for itself, if a reciprocally perfect alliance is not compatible with its neutrality, the same is not true of an imperfect defensive alliance, that is, such as will assure the proper defense of the country, without committing it in return to the defense of the other by arms. Piccioni¹ attempts to show that no state would enter into alliance by which it was bound to defend another, unless the agreement to defend were reciprocal. His argument is, however, easily refuted. It is no uncommon thing in treaties for powers to bargain with each other, offsetting an advantage of one kind by one in another field. Commercial interests in the neutralized state may be of sufficient value to one of its neighbors to fully compensate the latter for granting protection in time of war. It is in this way that the relations of Great Britain to Belgium have always been a very intimate nature; more intimate, in fact, than would arise from the mere fact that Great Britain is one of the guarantors of Belgian neutrality.

A concrete problem of defensive alliance is found in the proposed agreement between Belgium and Holland. The entire work of the Conference of London of 1831, was to re-establish the tranquillity of Europe, which for a decade and a half had rested upon the union of the Low Countries as one of its bases. It would seem, then, that nothing would be more in accord with the work of that Conference than an alliance of the two states founded upon mutual goodwill, and safeguarding their mutual independence.² The advantages which would accrue to the states themselves are not alone of a military nature. Belgium is an agricultural and industrial state, but lacks ships, and, prior to its exploitation of the Congo, it boasted of no colonies. On the other hand, Holland depends largely upon its fleet, its foreign commerce, and its colonies, as sources of wealth. Thus a customs un-

¹ Piccioni, 101.

² Descamps, Ed., 371f.

ion would seem to promise much for both states; and, in this case, there would be no opportunity for objection on the ground of disparity in size or strength of the two parties. The outstanding difficulty lay in the fact that the Dutch were ardent free-traders, while the Belgians were naturally protectionists.¹ From the military point of view, the alliance would seem even more advantageous than from the economic. The situation of these little neighbors is such that they are almost equally exposed to foreign aggression, though perhaps Holland enjoys a certain advantage from the fact that it lies north of the direct path between Berlin and Paris. The Scheldt River, so long a source of contention and bitterness, has become a great bond of union between the two states. Since this has long been declared an international stream, Holland is vitally interested in the question of what power controls its upper course. In time of war Holland must guarantee the neutrality of this river. No troops nor vessels of war may be permitted to pass through it, except in the single instance of troops passing through to defend Belgium from outside aggression.² Moreover, in case Holland is involved in war, no blockade may be established to close the mouth of the Scheldt.

No one can believe that the absorption of Belgium by either of its neighbors would long precede a similar fate for Holland. A defensive alliance between the two would approximately double the fighting strength of the army which either could put in the field, and thus means would be furnished to check the invader until interested neighbors might come to the rescue; if, indeed, the united forces could not furnish resistance sufficient to off-set any advantage which

¹ Malo, Chas., *Une entente militaire hollando-belge*, *Journal des débats*, XIII, part 2, 1222.

² Brialmont, H., *La neutralité et la défense de la Belgique*, *Revue Bleue*, 5th Ser., II, 545.

might be gained by an attack upon them. So argued many parties during the first decade of the present century¹

In 1901 Beernaert declared that in his opinion the political situations of the two countries were indissolubly combined; that there could not be a free Belgium without a free Holland, and conversely.² The defensive alliance was ardently desired by the French, who were anxious to secure their north-east border against a sudden onslaught by the Germans. They made short work of any legal objections which lay in the way, even at the expense of logic.

The legal right of Belgium to enter into a defensive alliance with Holland was questioned by the best authorities on international law. Even so ardent a patriot as Baron Descamps, while recognizing the benefits which would normally accrue to his country from such an alliance, held that it would be legal only if it did not require Belgium to carry military aid to her ally; or, at least, to do so only upon condition that the war should be of a nature to engulf both states at the same time.³ Despagnet declared that the conclusion of a military entente by Belgium would be illegal under any circumstances.⁴ Bonfils, in calling attention to the proposed alliance, ventured to prophesy that it would meet with opposition on the part of some states.⁵ It continued, however, to receive much encouragement from parties in both France and England, for the dread of Pan-Germanism and lack of confidence in German sincerity had by this time awakened across the channel. A series of articles, written under the *nom de plume* "Y", was published in the *Fortnightly Review* of this period, in which the author urged upon Belgium and

¹ Malo, *op. cit.*; Brialmont, *op. cit.*; afterward enlarged into a volume, *La Belgique et la Holland devant le Pan-Germanisme*; des Cressonnières, M. J., *Le neutralité de la Belgique et la droit d'alliance*, R. D. I., 2 Ser., IX, (1906).

² Descamps, *Id.*, 274.

³ *Ibid.*, 369f.

⁴ Despagnet, 180.

⁵ Bonfils, 215.

Holland the importance of the alliance, and of military preparations for self-defense.¹ Holding, as did Bonfils, that a formal alliance would be incompatible with Belgium's status as a permanent neutral, "Y" declared that all that could properly be done was to prepare the way for the prompt execution of such a convention when the hour should arrive; and he assured the Belgian and Dutch governments that such military cooperation would be the consummation of England's heartfelt wishes.²

The governments of both Belgium and Holland shrank from engaging in a military entente, but a Commercial Commission was appointed in 1907 to discuss problems of an economic nature, and to effect, if possible, an economic union.³ By 1910 this Commission was considered a permanent institution, and the relations between the two states were very cordial.⁴ An increase in the Belgian army, with a corresponding strengthening of the Dutch navy and coast defenses, seemed to indicate a mutual understanding between them, though no formal announcement might be made under the circumstances.⁵ Whatever the nature of the understanding as it existed in 1910, it is evident from the course of events in 1914 that the union was not sufficiently strong to bear the test to which it was subjected during that trying time. Belgium defended her soil as best she could without the assistance of Holland, and the latter succeeded in playing the hazardous part of a neutral during the entire period of the Great War.

Numerous attempts have been made to bring about the permanent neutralization of the three Scandinavian States.

¹ *England and Belgium*, *Fort. Rev.*, LXXIV, (1900); *England, Belgium and Holland*, LXXXVI, (1906); *The Entente between Holland and Belgium*, LXXXVII, (1907); *An Object Lesson in German Plans*, XCIII, (1910).

² *Fort. Rev.*, LXXXVI, (1906), 275.

³ *Le memorial diplomatique*, XLV, (1907), 711.

⁴ *Littell's Living Age*, CCLXVII, (1910), 819, quoting from *Sci. Rev.*

⁵ *Ibid.*, 820.

The course proposed to accomplish this result differs somewhat from that by which the existing permanent neutralities were created. It is known as "Federative Neutrality," since the three states were expected to unite in guaranteeing each other's status, and then to join in requesting the formal recognition of their permanent neutrality by the powers of Europe. At the outbreak of hostilities between Russia and Turkey in 1853, a contest which later developed into the Crimean War, the Scandinavian governments took measures to act in concert to defend their system of neutrality,¹ and these resolutions were remarkably similar to the rules adopted by the Declaration of Paris in 1856.² They were communicated by their diplomatic agents to twenty-three governments, and were accepted as satisfactory by the belligerent powers. In order to insure respect for this neutrality a certain amount of military and naval precaution was taken, the expenses of which were borne jointly by the three states.³ The success of this experiment led to an attempt to formulate from it a permanent policy, and to establish Scandinavian Federative Neutrality as a part of the public law of Europe. The movement found an able sponsor in Fredrik Bajer, a Danish publicist, who outlined the scheme at a session of the International Peace League, at Bern, in 1883. In 1894 a similar plan was presented to the Interparliamentary Conference for Arbitration and Peace, in session at The Hague, but the Conference adjourned without taking up the question.⁴ The plan reappeared at later sessions of this body, and met with varying degrees of favor. At the same time efforts were made by the governments of the Scandinavian countries to reach a mutual understanding on the subject, and to gain the sanction of the Great Powers for it.

¹ Bajer, F., *La système sandinave de neutralité pendant la guerre de Crimée et son origine historique*, R. H. D., XIV, (1900), 260.

² *Ibid.*, 288.

³ *Ibid.*, 268f.

⁴ R. D. I. P., I, (1894), 498.

However, very few of the publicists of Europe would declare for the legality of the plan, for they realized that a unilateral declaration could have no weight in law. In 1903 Martens espoused the cause of neutralization for Denmark; and gave to the public an article in which he endeavored to win support for that cause. He expressed the hope that the neutralization of Denmark would be followed by that of the other Scandinavian States.¹ It should be noted, however, that Martens based his plea for a general declaration upon purely political grounds, and denied any intention to give it a legal foundation. As a political venture the neutralization of the Scandinavian States would, undoubtedly have been acceptable to both Germany and Russia. The British and French failed to encourage the plan.

In 1904, upon the outbreak of the war between Russia and Japan, the Kingdoms of Denmark and Norway and Sweden proceeded in accord to lay down the rules of their neutrality during the impending struggle; and these rules were intended to apply to all future wars.² The following year the differences between Norway and Sweden forced the severance of the union under which they had been united since the Congress of Vienna. The bitter feeling between the two peoples seemed for a time likely to lead to hostilities, but happily their relations soon became more friendly. The Great Powers used all their influence to prevent bloodshed. An interdiction was placed upon the building of fortifications within a certain distance on either side of the boundary between the states. This boundary line had been firmly established for centuries, and no further difficulties arose on this point. On November 2, 1907, the governments of Germany, France, Great Britain and Russia agreed upon a Convention by which they bound themselves to respect the

¹ Martens, F. de, *La neutralisation du Danemark*, R. D. M., 5 Ser., XVIII, (1903), 316.

² R. D. I. P., XIII, (1906), 92ff.

integrity of Norway; and a guarantee to that effect was given.¹

The three Northern Kingdoms succeeded in maintaining their neutrality through the entire course of the Great War; and what action the others would have taken, had the neutrality of one been violated, can only be a matter of speculation. As late as 1909 the Norwegian Minister of Defense publicly declared that Norway's forces must always be prepared to hurry to the rescue should any foreign aggression befall either Sweden or Denmark.² But as for a genuine permanent neutrality, sanctioned by a convention of the powers, none has ever been established for these states.

One of the most delicate and complex questions of the international relations of permanent neutrals has to do with the enrollment of individuals, or the formation of corps of volunteers upon its soil, for service under foreign banners. That a neutral may not permit the levy of bodies of men for the service of a belligerent is fully recognized.³ There is, however, no general prohibition on the right of an individual to leave his own country, and take service under a foreign flag.⁴ Such an act does not release from its international responsibility the state of which he is a subject. It does not even involve the loss of his nationality. By taking service under a foreign flag an individual merely loses a part of the protection accorded by governments to their nationals abroad.

The sending of troops beyond its own borders by a permanently neutral state is to be condemned. It is thereby robbing itself of one of its legitimate means of protection. It would be manifestly unfair for Belgium, for instance, to look to its guarantors for military protection, while Belgian troops were scattered throughout the world on any pretext.

¹ *State Papers*, C, 536.

² Schwan, A., *The Defense Problem of Scandinavia, Nineteenth Century*, LXVI, 900.

³ Hall, W. E., 592.

⁴ *Ibid.*, 593.

Yet several times since Belgium was created a permanently neutral state her troops have fought abroad. In 1832, and again in 1834 Belgian regiments were sent to Portugal, to aid the Dona Maria in her struggle to maintain her rights to the throne of that country against the revolt of the Miguelist party.¹ The object of this expedition having been attained, an unsuccessful attempt was made by the Belgian government to hire the legions to the service of Queen Isabella of Spain.

Still less excusable were the relations of the Belgian government with the ill-starred Empire of Maximilian in Mexico.² This Austrian Prince, in 1864, established himself as the head of the government of our Southern neighbor. The whole movement was a part of the expansive dreams of Louis Napoleon, and received the active support of the French army. The new Empire received the recognition of France, Spain, Italy, Austria and the Netherlands, while Great Britain declared itself ready to recognize it if certain conditions were met.³ The government of the United States protested vigorously against this action of the European Powers, and supported the presidential party in Mexico, under Juarez; but, was at the time in the throes of its own civil war, and took no immediate steps to intervene.

When France prepared to send a legion of 8,000 men to support the new Emperor, a movement was set on foot to raise a contingent of volunteers in Belgium and Austria; and this plan received the consent of the Belgian Minister of War. The regiment, which was known as the "Empress Charlotte," was enrolled, organized and drilled on Belgian soil. Other officials hesitated to go as far as had the Minister of War, but leave of absence was given to officers and men by royal decree.

¹ Descamps, Ed., 481ff.

² *Ibid.*, 483. Descamps endeavors to justify the interference.

³ *Ibid.*, 489.

Baron Descamps¹ and Ernest Nys² attempt to excuse the acts of the Belgian government. They hold that there was in Mexico a government recognized by Belgium and several other European Powers. This government was not, at the time, engaged in war with any civilized state; and strict orders were given that if the United States should intervene by force the Belgians should immediately withdraw, or forfeit their citizenship.³ Such war as was going on in Mexico was purely civil, and of the guerilla type. This state of affairs, it is held, gave grounds to justify, in principle, the action, or rather the indifference of the Belgian government. But Descamps himself seems somewhat skeptical as to the applicability of his own conclusions. He frankly admits that the whole transaction was out of harmony with the *prophylaxie* or preventive purpose of Belgian neutrality; and, consequently, it was most decidedly not a politic act, even if it could be legally justified.

In 1881, when England and France were threatened with serious disagreement as to the procedure to be followed in Egypt, several publicists sought to effect a compromise by placing that state under the control of Belgium. It was proposed to send a corps of the Belgian army to restore order. The impracticability of such an arrangement was too obvious, and Great Britain settled the question by the establishment of the "veiled protectorate." The idea of employing a permanently neutral state to "fight the battles of civilization," in order to avoid the seemingly inevitable clash which must take place when the forces of two of its guarantors came in contact, was indeed ingenious; but it fitted poorly with Belgium's legal status, and still worse with the preventive purpose back of the establishment of the neutrality.

In 1900, when the Boxer uprising broke out in China,

¹ Descamps, Ed., 489.

² Nys, *Notes*, 33f.

³ Descamps, Ed., 489.

the members of the Belgian legation, as well as other Belgian nationals in the Empire shared the jeopardy in which all foreigners were placed, and the Belgian government took hasty steps, in union with the other powers, to hasten relief to those in danger.¹ The Allied Powers of America, Europe and Asia agreed upon joint action in the matter, and Belgium planned to participate. The forces of the Maritime Powers were soon at the scene of the disturbance, and the danger was averted. The Belgian Relief Corps was never sent out. Since Belgium was acting in union with all of its guarantors, no condemnation can rest on it for the part taken in this incident.

There remains one question of great interest before leaving the field of the international relations of permanent neutrals. Has a permanently neutral state a right to acquire a colony? The question is of but academic interest so far as Switzerland and Luxemburg are concerned. But with Belgium the case is entirely different. Not only has Belgium access to the sea coast, but, through the development of its industries and the rapid increase of its population, it has fostered an ambition out of proportion to its size. The quiet lot of a genuine permanent neutrality has become more and more distasteful, and there has developed no small desire to play a virile part in the great international game. It is this ambition which brought about the undoing of the work of the Conference of Berlin, at the same time adding to the Belgian realm a colony many times the size of the original state.

We have seen how the Congo State was formed; how it was received into the family of nations in 1885; and how King Leopold of Belgium was chosen for the first sovereign. Having secured the proper consent from both branches of the Belgian Legislature, the King notified the various governments that he had organized his government, and declared

¹ Descamps, Ed., 493.

the Congo a permanently neutral state.¹ The union of the Congo and Belgium was to be strictly personal. The new government was to consist of five administrators of departments, and Stanley was made governor.² The interest of Belgium immediately began to increase. Private companies were formed to exploit the resources of the Congo,³ and thus the two states became bound together by powerful economic ties. When the King, who had furnished the capital for the earlier ventures, was no longer able to supply what was needed for the development of trade, the Belgian government was authorized to become a shareholder.⁴ The finances of the Congo State were kept in a precarious condition, owing to the fact that the Conference of Berlin had declared for free trade. In fact, the state had been able to maintain itself only by loans. In 1890 the General Act of the Brussels Anti-Slavery Conference carried with it a supplementary declaration by which the prohibition of import duties was removed,⁵ and by a decree of April 9, 1892, a financial schedule of such duties was published.

On August 2, 1889, King Leopold drew up his famous will in which he declared his wish to "bequeath and transmit, after his death, to Belgium all his sovereign rights in the Independent State of the Congo, such as they were recognized by the decrees, conventions and treaties made since 1884 among the foreign powers on one hand and the International Association of the Congo and the Congo Free State of the other, as well as all benefits, right and advantages attached to his sovereignty."⁶

The project of annexation now began to be discussed open-

¹ *Archives Diplomatiques*, 2 Ser., XXIX, 20; *State Papers*, LXXVI, 210.

² *Arch. Dip.* 2 Ser., XIV, 345.

³ Fauchille, P., *L'annexion du Congo à la Belgique et le droit international*, R. D. I. P., II, (1895), 406.

⁴ *Arch. Dip.*, XXXI, 303f.

⁵ Clercq, XVIII, 523ff.

⁶ *Arch. Dip.*, LIII, 110.

ly in the Belgian Chambers.¹ Shortly after this King Leopold informed the Belgian Minister that if, without waiting the time of his death, it should be convenient for the country to contract closer bonds with his possessions in the Congo, he would not hesitate to put them at the disposal of Belgium.² On July 3 of the following year a Convention was entered into by the Belgian government and the Congo Free State whereby the former advanced a loan of 25,000,000 francs, and reserved to itself the right after the expiration of a period of ten years and six months to annex the Congo State with all the benefits, rights and advantages attached to its sovereignty.³ There developed, however, in the Belgian Chambers a considerable party of anti-annexationists, composed, for the most part of socialists; and numerous questions arose as to the constitutionality of the agreement, as well as to the advisability of the annexation from a political point of view. The efforts of the government were now directed to prepare the way for the annexation, and they were rewarded with success when, in 1893, the revised constitution provided for special laws to govern the colonies, over-sea possessions, or protectorates which might be acquired.

Since the formal annexation of the Congo as a Belgian colony involved the undoing of the work of the Conference of Berlin, negotiations were opened with several of the Signatory Powers with the intention of gaining their assent to the transaction. By a Convention of May 12, 1894, Great Britain admitted the possibility of the annexation.⁴ The French government was also approached on the subject, the question being extremely delicate, owing to the French right of preemption, as it was called, for it will be remembered

¹ Fauchille, 409.

² *Arch. Dip.*, LIV, 111.

³ *Ibid.*, loc. cit.; *State Papers*, LXXXII, 1013; *R. D. I. P.*, (1894),

⁴ *State Papers*, LXXXVI, 19ff.

that the International Association had agreed to give the preference to France, if under unforeseen circumstances, it should ever be brought to sell its possessions.¹ When, therefore, January 9, 1895, the Belgian government effected a treaty with the Congo State, whereby the latter again agreed to give up all of its sovereign rights,² Hanatoux, the Minister of Foreign Affairs, instructed the French Minister at Brussels to enter a protest against the proposed act,³ but an understanding was soon brought about between the two governments. By an agreement concluded at Paris, on February 5, 1895, France gave its consent to the transfer of the possessions of the Congo Free State to Belgium. The Belgian government recognized a right of preference for France, should it, in turn, ever decide to give the territory up.⁴ No others of the Signatory Powers were consulted, and as none of them saw fit to enter a protest against the annexation, the Belgians interpreted their silence as giving consent.⁵

By the terms of the Belgian constitution all treaties with foreign powers which are concluded by the government must be submitted to the Chambers. When the treaty of January 9 was, accordingly, placed before them, it was vehemently opposed, not only by the socialists, but also by some of the conservative members, on the ground that it was poor policy to attempt to shorten the term of years agreed to in 1890.⁶ The question was kept in constant agitation, yet even when, in February, 1901, the date set by the Convention of 1890 arrived, the opposition was so strong that a formal act of annexation was adjourned to an indefinite date.⁷

The bonds between the two states were, however, constantly growing stronger. In 1902, Joseph Delpech, after carefully reviewing the situation, declared that the annexa-

¹ *V. supra*, 58.

² *Arch. Dip.*, LIII, 173.

³ *Ibid.*, 149.

⁴ *Ibid.*, 153f; *Clercq*, XX, 213.

⁵ *Arch. Dip.*, LIV, 108.

⁶ *R. D. I. P.*, IX, (1902), 470.

⁷ *Ibid.*, 471.

tion of the Congo by Belgium if not yet consummated in law was realized in fact.¹ The time came, in 1907, when it was possible to recognize the annexation as a *fait accompli*. The step, was encouraged by the fact that several of the leading authorities on international law had become champions of the legality of the annexation. Consequently, on November 28, a new treaty was concluded between Belgium and the Congo Free State, whereby King Leopold ceded to Belgium the sovereignty of the Congo with all the rights and duties pertaining thereto.² By Article IV of this treaty the date upon which Belgium should assume the exercise of its new sovereignty should be fixed by a Royal Decree. The step having been approved by the Chambers, the law providing for the annexation was promulgated by the King, on October 18, 1908,³ and on the 30th of the same month provision was made for the creation of an office of Colonial Minister.⁴ On November 4 King Leopold, by virtue of the Act of November 28 of the preceding year, issued a Royal Decree, by which he appointed November 15 as the day on which Belgium should assume the exercise of its sovereignty over the territories constituting the Congo Free State.⁵

Mr. Henry Lane Wilson, the United States Minister at Brussels, on April 7, 1908, conveyed the approval of his government for the intended step;⁶ and shortly afterward the British Minister did the same.⁷

Thus the annexation of the Congo was effected. The change had been so gradual that this final act created no disturbance of the equilibrium of the powers. The Congo had been a colony in all but name for nearly two decades, and even the government itself underwent very little change as a result of the action taken in 1908.

¹ *Ibid.*, 479.

² *Arch. Dip.*, CVII, 294f.

³ *Ibid.*, 293.

⁴ *Ibid.*, 337.

⁵ *Ibid.*, 349.

⁶ *Ibid.*, CVIII, 222f.

⁷ *Ibid.*, 77.

In order to study the legal questions involved in the transaction it is necessary to refer once more to the General Act of the Berlin Conference of 1885. We have seen how Bismarck, at the final session of that body, announced that a new state had come into existence. The powers accepted the statement, at the time, without question, since they had practically all previously entered into treaty relations with the Association, and there seemed nothing incongruous in the transformation of this organization into a state. But as soon as King Leopold undertook to organize a government for the Congo, it became evident that an international anomaly had been created. Owing to the fact that it is exceedingly difficult for white men to live for any length of time in this equatorial region, the seat of the new government was located at Brussels. The administrative officials were all Belgian subjects, residing at Brussels, and subject to Belgian law. The High Court of Cassation was composed of six jurists, three of whom were Belgians. No constitution was ever proclaimed for the new state, hence Leopold was an absolute monarch. It is doubtful if the organization really deserved the name of *state*, although Nys by a carefully worked-out, theoretical exposition, sought to show that title to be applicable.¹ An international organization with its seat of government in Europe and its territory in Africa, while its executive and judicial officers were all subjects of other countries, was surely an exceptional form of a *state*.

The proposal of annexation raised serious legal questions. In the first place, it was held that the regime of permanent neutrality would not permit Belgium to hold a colony. The London Conference on February 19, 1831, had declared that views of conquest were incompatible with the neutrality of Belgium;² and this could very easily be interpreted to in-

¹ Nys, *L'état indépendant du Congo et le droit international*, R. D. I., 2 Ser., V, 17.

² Clercq, IV, 17.

clude peaceful conquests as well.¹ Such an act as the proposed annexation could only be legalized by action of the Powers which had created the neutrality of Belgium, as well as that of the Congo.² Furthermore, Belgium's neutrality was guaranteed only within the limits indicated by the Treaty of London, while the Congo had been established and recognized as a free and independent state. It was obvious that annexation would involve a change of status for both of the neutralized states. Both would thereby expose themselves to conditions which would threaten the violation of this neutrality.³

In reply the annexationists declared that colonization is a natural function of civilized peoples, especially if they live in densely populated districts;⁴ that it is but a legitimate right of every independent state, and hence may not be denied to permanent neutrals.⁵ If a neutralized state ought not to acquire colonies because such an act might excite contests and rivalries, it could, on the same grounds, be interdicted from many other functions of independence.⁶ As to the London Treaty, Baron Descamps declared that the "limits" referred to were those established upon the division of the old Kingdom of the Low Countries into Holland and Belgium, and had no reference whatever to future acquisitions which might be made by either.⁷ The annexationists denied that either Belgium or the Congo were creations of Conventions, since both were free before the meeting of the Conferences, and had entered into treaty relations with certain powers.

"It is not true to say that Belgium owes its existence to the Great Powers of Europe. Its freedom it owes to itself and to itself alone. It had declared itself sovereign and free

¹ Fauchille, 427; Despagnet, *L'état du Congo et la Belgique*, *Revue Bleue*, 4 Ser., I, (1894), 780.

² Fauchille, 417; Piccioni, 96; Despagnet, *op. cit.*, 779.

³ Fauchille, 427.

⁴ Descamps, Ed., 508.

⁶ *Ibid.*, 510.

⁵ *Ibid.*, 509.

⁷ *Ibid.*, 513.

before any foreign intervention took place, and the Conference of London could merely recognize an accomplished fact which it was impossible to suppress, and which shall not be suppressed now. It is not true to say that Belgium is only an artificial creation of the diplomacy of 1831, and remains subjected to the will to Europe. Europe did not create it, and Europe cannot destroy it."¹ So ran the impassioned address of Pierre Graux before the Belgian Chambers.

The annexationists held that, far from being inimical, the neutralities of Belgium and the Congo would combine for the mutual strengthening of both.² Their opponents declared that the union of the two neutralities was impossible, inasmuch as that of Belgium was guaranteed while that of the Congo was merely recognized.³ Baron Descamps countered with the argument that the purpose of the neutralization of the Congo was to keep that region from becoming embroiled in European wars, and that this could best be accomplished by placing it in the hands of a power which was itself legally removed from participation in them.⁴

The *fait accompli* put an end to the discussions. We have seen that the acquiescence of at least three of the parties of the Berlin Convention was given before the final act of annexation was promulgated. It is certain that the growing jealousy of British aggressions early led France to yield its rights of preemption in favor of Belgium; but after 1904 France and Great Britain were forced into the Entente Cordial by a mutual fear of Pan-Germanism, and a studied courting of good feeling in Belgium became a part of their policy.⁵ Thus every practical obstacle to annexation was removed, and it may be said that, on the whole, this was the natural solution of the problem.

¹ Graux, P., *La neutralité de la Belgique et l'annexion du Congo*, R. D. I., 2 Ser., VII, (1906), 48.

² Descamps, Ed., 512.

³ Fauchille, 429; Despagnet, 781.

⁴ Descamps, Ed., 527.

⁵ "Y," *Fort. Rev.*, LXXXVI, 275.

CHAPTER XI

THE GUARANTEE IN THEORY AND PRACTICE

FEW questions of international law have given rise to more heated arguments, or resulted in greater confusion of opinion than has that of the nature of an international guarantee. The difficulty lies in the frequent unwillingness of states to fulfil their treaty obligations. This has led to a general distrust among governments, and an attempt to secure something more reliable than a mere treaty-promise. "He that sweareth to his own hurt and changeth not," is as scarce among nations as the psalmist implied him to be among individuals.

Several reservations may be made in principle before taking up a definite study of the guarantees given in the four treaties of permanent neutrality. In the first place, as in any contract, the consent of all the contractants is necessary for the validity of the agreement. No state may place itself, or any of its agreements, under the protection of another power without the consent of the latter; nor can two states enter, on their own initiative, into an agreement which concerns the action of a third party unless this party agrees to the plan.¹ Again, before a nation can be justified in calling on its guarantors for assistance, it must be obvious that the task for which it is asking help cannot be performed without help. Even in the case of guarantors, no nation is obliged to do for another what the latter can do for itself. Thirdly, the guarantor must, in the fulfilment of its agreement, conform itself to the general principles of international law; it cannot be held to fulfil treaty engagements which involve a violation of international law, or of earlier engage-

¹ Bluntschli, *Lardy's translation*, 250.

ments.¹ Lastly, the guarantee may be modified and subjected to all manner of conditions by the terms of the convention which creates it. In each individual case the intention of the contracting parties should be discovered and applied.²

In early times security for the fulfilment of the terms of a treaty was made sure by the exchange of hostages; and, with the other spoils of war, there often went with the victor the dearest and nearest of kin of the vanquished, as a guarantee that the promises made by the latter, or the demands made upon him would be met in full. Later, under the feudal regime, the powerful vassals gave their guarantee to the treaties concluded by their lords. Finally there developed formal treaties of guarantee; but these are apt to perpetuate the very faults which they are intended to correct.³ A party may refuse to act in good faith as a guarantor, as well as a signer, of any kind of a treaty, and in international affairs there is no court to enforce such obligations.

For our study of the guarantees given by the Powers for the permanent neutralities, it may be well to refer once more to the treaties by which these neutralities were created. The Declaration of the Powers, of March 20, 1815, on Swiss Affairs, promised that, as soon as the Helvetic Diet should accede to the arrangements made by the Congress, an act should be passed recognizing and guaranteeing, on the part of all the powers, the permanent neutrality of Switzerland, and on May 27, the Diet expressed the eternal gratitude of the Swiss nation for the promise of this guarantee. On November 20 an act of the Five Powers fulfilled the promise. Since there has never been a serious threat of violation of Swiss neutrality, the nature of this guarantee has aroused little interest.

¹ *Ibid.*, 252.

² Milovanowitch, 7.

³ *Ibid.*, 8.

X The guarantee of the neutrality of Belgium is found in the treaties of April 19, 1839. The first of these, between Belgium and Holland, declares, by Article VII, the independence and permanent neutrality of the former; the second, between Belgium and the Five Powers, declares that the arrangements of the first treaty are placed under the guarantee of the sovereigns of the Signatory Powers. Article II of the Treaty of London of March 11, 1867, places the neutrality of Luxemburg under the sanction of the collective guarantee of the Signatory Powers, with the exception of Belgium. By the Final Act of the Congress of Berlin, of 1885, the powers engaged mutually to respect the neutrality of the Congo Basin, but in no case did they agree to cause this neutrality to be respected.

Upon comparison of the engagements entered into by the powers with regard to Belgium and Luxemburg, it will be seen that, although the thought of some of the leaders of the movement for neutralization in 1867 was to place Luxemburg in a situation identical with that of Belgium in its relations with Europe,¹ in reality there is a technical difference in the status of the two. The guarantee of Belgian neutrality is *simple*, or *joint and several*;² that is, the neutrality is placed under the guarantee of each of the powers separately, and at the same time under the guarantee of them all. Belgium may appeal to any one of its guarantors, or, at its discretion, to a conference of them all. Should the threat of violation come from one of the guarantors, or should, for any reason, one of them refuse to fulfil its treaty obligations when appealed to by the neutral state, the others are in no wise released from their obligations to come to its rescue. Each one of the guarantors has the right to enter into negotiations with the co-guarantors in case the neutral shall call on it for aid; or it may even go so far as to take

¹ Martens, *Nouveau Recueil*, XVIII, 432f.

² Pradier-Fodéré, II, 632.

the initiative in order to protect the neutrality which is guaranteed.

The guarantee of the neutrality of Luxemburg is, on the other hand, expressly stipulated as *collective*; that is, the principle of neutrality is placed under the common guarantee of the Signatory Powers. Such a guarantee implies that there should be joint action on the part of all the guarantors, if this be possible, in order to defend the neutrality. The neutral, or one of the guarantors, may call a conference to discuss the proper course to be pursued under the circumstances; and, so long as there is a majority in favor of a certain course, it becomes the duty of all to abide by this decision.

The Treaty of London, of 1867, was hardly signed when the British Cabinet was put on the defensive to explain the nature of the obligations to which it had bound the nation in guaranteeing the neutrality of a state in which England could have no immediate interest. Lord Stanley, who, as Secretary of State for Foreign Affairs, had presided over the Conference, admitted, on June 14, before the House of Commons, that he had hesitated before signing the agreement, and that he had finally given his consent only to avoid war between France and Prussia; a war in which England would probably be involved, through an invasion of Belgium by one or both belligerents.¹ On being questioned more closely, Stanley continued his explanation:

"The guarantee now given is collective only. That is an important distinction; it means this, that in the event of a violation of the neutrality all the powers which have signed the treaty may be called upon for collective action. No one of these powers is liable to be called upon to act singly or separately. It is a case, so to speak, of limited liability. We are bound in honor, you can not place a legal construction upon it, to see in concert with others that these arrangements are maintained. . . . If they refuse to join us, we are not bound single handed to make up the de-

¹ Hansard, 3 Ser., CLXXXVII, col. 1910f.

sciences of the rest. Such a guarantee has obviously rather the character of a moral sanction to the arrangements which it defends, than that of a contingent liability to make war, but it would not necessarily imply the obligation."

To Lord Stanley's father, Lord Derby, who was then Prime Minister, fell the task of defending the treaty in the House of Lords. On May 13, he declared :

"The guarantee of Luxemburg is not a joint and several guarantee, but is a collective guarantee, and does not impose upon this country any special duty of enforcing its provisions. It is a collective guarantee of all the powers of Europe."¹

On June 20 he continued :

"The only two Powers by which the neutrality of Luxemburg is likely to be infringed are two of the parties to the collective guarantee; and therefore if either of them violates the neutrality the obligation on all the others would not accrue."²

In this opinion he was supported by Lord Clarendon.

"No one of the powers can be called upon to take single action, even in the improbable case of difficulty arising. I can not help regarding this guarantee as a moral guarantee, a point of honor, as an arrangement which can not be violated without dishonor by any of the Signatory Powers; and I believe an agreement of that nature may be more binding than the precise terms in which a treaty is couched, for it is a characteristic of these terms that when the formal treaties are found inconvenient, they are disregarded."³

On July 4 Lord Derby made his most famous speech on the question :

"Whatever the interpretation which I may put on particular words of the treaty, or whatever the interpretation which Her Majesty's government may put on it, such an interpretation can not affect the international law by which the terms of all treaties are con-

¹ Hansard, CLXXXVII, 379.

² *Ibid.*, 151.

³ *Ibid.*, 152f.

strued. I am not much schooled in the ways of diplomats, but I believe that if there be one thing more clear than another it is the distinction between a collective and a separate and several guarantee. A several guarantee binds each of the parties to do its utmost individually to enforce the observance of the guarantee. A collective guarantee is binding on all of the parties collectively; but if any difference of opinion should arise, no one of them can be called upon to take upon itself the task of vindication by force of arms. The guarantee is collective, and depends upon the union of all the parties signing it; and no one of these parties is bound to take upon itself the duty of enforcing the fulfilment of the guarantee. As far as the honor of England is concerned, she will be bound to respect the neutrality of Luxemburg; . . . but she is not bound to take upon herself the Quixotic duty, in the case of a violation of the neutrality of Luxemburg by one of the other Powers, of interfering to prevent its violation because we have only undertaken to guarantee it in common with all the other Great Powers of Europe. If the neutrality should be violated by any of them, then I say it is not a case of obligation, but a case of discretion, with each of the Signatory Powers, as to how far they should singly or collectively take upon themselves to vindicate the neutrality guaranteed."¹

This so-called Derby doctrine has met with little acceptance among leading publicists. Pradier-Fodéré,² Funck-Brentano and Sorel,³ Calvo,⁴ and Sir Frederick Smith⁵ accept it to some extent. On the other hand, Nys calls Stanley's "a strange interpretation,"⁶ and says that to advocate such an interpretation "is to declare the epithet *collective* destructive of the guarantee itself;" that its sponsor forgot "that states do not conclude treaties in order to establish agreements of honor."⁷ Bonfils,⁸ Milovanowitch,⁹ Ed-

¹ Hansard, CLXXXVIII, 968.

² Pradier-Fodéré, II, 33.

³ Funck-Brentano and Sorel, 354ff.

⁴ Calvo, IV, 499.

⁵ Smith, Sir F., 5th edition by C. Phillimore, 144.

⁶ Nys, *Notes*, 40.

⁷ *Ibid.*, 42.

⁸ Bonfils, 492f.

⁹ Milovanowitch, 5ff.

ouard Descamps,¹ Piccioni,² and Servais³ are of the same opinion. Rivier⁴ and Despagnet⁵ declare that if no agreement for community of action can be reached by a conference, each guarantor is bound to fulfil the obligation. Bluntschli declares to the same effect,⁶ and is quoted by Hall,⁷ who goes on to say :

"Such a guarantee would be meaningless if it did no more than provide for common action under circumstances in which the guaranteeing powers would act together. . . . It would be well to abstain from concluding agreements in terms which may surely mislead some of the parties to them, and to avoid making agreements at all which some of the contracting parties may intend from the beginning to be illusory."

Oppenheim says of the Derby doctrine, "I do not know of any publicist who would or could approve of it."⁸ Martens condemns the doctrine, merely making the reservation that no guarantor is bound to sacrifice its own existence to save the guaranteed state.⁹

Opposition has frequently been voiced in Parliament itself. On June 20, 1867, the Earl of Granville declared,

"If Her Majesty's Government instead of increasing our liabilities, have actually diminished them, it appears to me that there has been the most complete mystification of some of the most distinguished diplomats of Europe ever heard of . . . In spite of these fanciful interpretations as to how far we are bound by treaties, it is possible that we may have rendered ourselves liable at some future time to practical inconvenience, or the risk of being considered unfaithful to our agreements."¹⁰

The same speaker, three years later, referred bitterly to the Derby doctrine saying,

¹ Descamps, Ed., 541ff.

² Piccioni, 13f.

³ Servais, 56ff.

⁴ Rivier, II, 104ff.

⁵ Despagnet, 144.

⁶ Bluntschli, 253.

⁷ Hall, 6th edition, 337f.

⁸ Oppenheim, I, 575.

⁹ Martens, I, 554.

¹⁰ Hansard, CLXXXVIII, 153.

"We are now in a position like that described by a Conservative government when we joined in a treaty guaranteeing Luxemburg, and when, almost before the ink with which it was signed was dry, the Prime Minister and Foreign Minister of this country announced, to the surprise of France and the indignation of Prussia, that we had signed as a collective guarantor, and as the cooperation of the other Powers was the only case in which the guarantee could probably be brought into question, England had brought herself under no new obligation at all."¹

Indeed, murmurs had already arisen on the Continent that it was no longer of any use to make treaties with Great Britain, since she would not keep them when made.²

Nevertheless, when, on August 2, 1914, German troops entered the Grand Ducal territory, the British government stood squarely upon the Derby Doctrine. Sir Edward Grey, upon being asked by M. Cambon, the French Ambassador at London, to define his government's attitude toward the neutrality of Luxemburg, "told him the doctrine on that point as laid down by Lord Derby and Lord Clarendon in 1867,"³ and reminded him that "the convention of 1867 relating to Luxemburg differed from the treaty relative to Belgium in this sense, that England was bound to uphold this latter agreement without the support of the Guaranteeing Powers, while, for Luxemburg, all the Guaranteeing Powers must act in concert."⁴ Thus England persisted in holding a position which is untenable from a legal point of view, and one that had been condemned by the best authorities among her own, as well as foreign publicists. It is impossible to see why a guarantor should be any more bound in the case of Belgium than in that of Luxemburg; yet the British government has repeatedly let it be known that it would regard the violation of the neutrality of Belgium as a serious

¹ *Ibid.*, CCIH, 1756.

² See the speech of Lord Russell, *Hansard*, CLXXXVIII, 975.

³ *British Blue Book*, Document 148.

⁴ *French Yellow Book*, 137.

matter, and one which might be interpreted as a *casus belli*.¹ To an impartial observer it would seem that a collective guarantee, in international as well as in private law, is intended to be stronger than a simple guarantee; and that England's partiality for Belgium is the outgrowth of circumstances in which its treaty obligations and its political and commercial interests coincide. If by the treaty of 1867 Great Britain bound itself only to respect the neutrality of Luxemburg, the *raison d'être* of the treaty is hard to find; for the situation of the Grand Duchy is such that only under very uncommon circumstances could British troops gain access to its territory. The greatest of English authorities on international law utters a timely warning in this regard.

"Modern writers are more struck by the impossibility of looking at international contracts as perpetually binding, than by the necessity of insisting upon that good faith between states without which the world has only before it the alternatives of armed suspense or open war; and they too often lay down canons of such perilous looseness that if their declaration is to be accepted an unscrupulous state need never be in want of a plausible excuse for repudiating an inconvenient obligation, and this unfortunately occurs at a time when the growing laxity which is apparent in the conduct of many governments and the curious tolerance with which gross violations of faith are regarded by public opinion render it more necessary than ever that jurists should see with greater than ordinary care such small influence as they have to check wrong and to point out what is right."²

The powers guaranteeing a permanent neutrality have never acted in accordance with uniform rules in fulfilling their guarantees. Thus when in 1846 Cracow was absorbed by Austria, Russia and Prussia were accessories to the deed, while Great Britain and France, who, as signers of the Final Act of the Congress of Vienna, had become, to a certain extent at least, guarantors of its provisions, offered only pla-

¹ See the Article entitled *England, Belgium and Holland*, by "Y", in *Fort. Rev.*, LXXXVI, 267ff.

² Hall, W. E., 342.

tonic protests. Russia and Austria, being far removed from the neighborhood of Belgium and Luxemburg, have never manifested the slightest interest in the maintenance of their neutrality, although both legally share in the responsibility of the guarantees. Upon Great Britain has devolved the task of fulfilling the guarantee of the neutrality of Belgium, and though altruism may have played but a small part in directing its conduct, still it may be said to Britain's credit that it has never hesitated in the performance of its international duty in this regard. Luxemburg, through its close commercial affiliation with Germany, has found itself drawn to that power, and was, before the outbreak of the Great War, little more than a German appanage. This was undoubtedly the reason why the German government seemed to give so little thought to the violation of the neutrality of the Grand Duchy.

We have seen how, in 1870, Great Britain concluded identical treaties with France and Prussia, seeking a renewed safeguard against the violation of Belgian neutrality. This act on the part of the British government has been construed as proving that the treaties of 1831 and 1839 were no longer valid; but this construction can not be maintained. The treaties of 1870 expressly stated that the former treaties were still in force, and that, after a period of one year from the ratification of a treaty of peace, the international status of Belgium should be governed by the terms of the earlier treaties.¹ The real purpose of the treaties of 1870 was carefully explained by Mr. Gladstone, who was Prime Minister at the time.² Bismarck had seized this opportunity to win support for the German cause, by making public certain negotiations which had recently been entered into by Louis Napoleon and himself with regard to the incorporation of Belgium with France. At the outbreak of the war it seemed not improbable that the latter power would come out of the

¹ Hertslet, III, 1086ff.

² Morley, J., *The Life of W. E. Gladstone*, (3 vols. London and New York, 1903), II, 340ff.

struggle victorious, and in such an event it was not unlikely that the right to annex Belgium would be one of the rewards of the victor. It was to guard against such an outcome that Gladstone thought it wise to negotiate new and auxiliary treaties with the belligerents. It seems today little short of miraculous that the neutrality of both Belgium and Luxemburg was respected during the Franco-Prussian War.¹ Indeed it was early felt that, in the event of another war between the same parties, the status of the permanent neutrals would not be respected, although German officials constantly repeated assurances that their government would live up to the spirit and letter of its treaty obligations.²

At the same time the British government prepared to fulfil, whenever occasion might arise, the engagements which it had contracted toward Belgium. In 1875, when Germany threatened a second attack upon France, a military commission was sent from London to Brussels to concert measures of defense.³ In 1906, when feeling among the powers once again grew acute, a military agreement was entered into between certain officials of the armies of Belgium and England, whereby the latter pledged itself to furnish help in case of need, and definite arrangements were made for landing and using British soldiers on Belgian soil.⁴ It was the discovery of this agreement in the archives at Brussels, which led the German government to attempt to justify its violation of Belgian neutrality on grounds of collusion between Belgium and Great Britain, but the German statement omitted to stress the fact that Great Britain had expressly pledged itself not to place a single soldier on Belgian soil until after a violation by Germany had actually taken place. Furthermore, the rape of Belgium took place before this

¹ See the note of King Charles of Roumania to King Albert of Belgium, 1912, given in Waxweiler, 20.

² Belgian Grey Book, 12.

³ "Y", *Fort. Rev.*, XXXXVI, 268.

⁴ B. B. B., Appendix, 4; B. G. B., 2, part II, X.

evidence was discovered, hence it played no part in the earlier plans of the German government.

When, during the last days of July, 1914, it became evident that a European conflict was about to break out, Belgium took steps to assure its guarantors of its determination to enforce its neutrality,¹ and immediately placed its army on a "strengthened peace standing."² From the first the French authorities assured the Belgian government that the neutrality of Belgium would be respected by their forces, as long as it was not violated by their foes.³ On July 31, the British government requested from France and Germany statements of their respective attitudes toward Belgian neutrality.⁴ The French promptly returned a favorable reply,⁵ while the Imperial Minister at Berlin refused to commit his government.⁶ On the evening of August 2, the very day that the German forces, under pretense of protecting the railroads which were under German control,⁷ invaded the territory of Luxemburg, the German Minister at Brussels handed the Belgian Minister of Foreign Affairs the famous "very confidential" note, to which an answer was to be returned within twelve hours.⁸ In this note the German government declared that in order to forestall a French advance through Belgian territory, it had been forced to plan sending its own troops through. So long as Belgium remained friendly to the Imperial government, the latter would guarantee the possessions and the independence of the Belgian kingdom, would evacuate all Belgian territory upon the conclusion of peace, and would pay for all supplies, and make good all damages caused directly by its troops; but in the event of opposition to the German troops by the Belgian government, the latter would of necessity be regarded as an en-

¹ B. G. B., 2.

² *Ibid.*, 8.

³ *Ibid.*, 9.

⁷ F. Y. B., 133.

⁸ B. G. B., 20; *Times Documentary History of the War*, II, 357.

⁴ *Ibid.*, 11.

⁵ *Ibid.*, 15.

⁶ *Ibid.*, 14.

emy, and the eventual adjustment of the relations between the two states must be left to the decision of arms.

As a permanent neutral it was impossible for Belgium to accede to this request. Germany, one of the guarantors of that neutrality, was exceeding its rights by seeking to induce the guaranteed state to abandon its neutrality. We have already shown the difference in the international obligations of Belgium and Luxemburg, for the latter, having undergone a process of "radical neutralization," was powerless to defend itself, while the former was under obligation to its guarantors to defend itself to the utmost of its ability. Certain acts of the German government go to show that it realized that the thing asked of Belgium was incompatible with national honor. Switzerland, the only state of Europe whose international status was similar to that of Belgium, was congratulated by the German government upon its determination to defend its neutrality against all would-be aggressors. On August 4, the German Secretary of State, von Jagow, admitted his country's guilt during an audience granted to the Belgian Minister at Berlin. He said, "Believe me, it is with acute grief that Germany decides to violate the neutrality of Belgium. . . . Germany has nothing with which to reproach Belgium, and the attitude of Belgium has always been perfectly correct."¹ The Chancellor, Bethmann-Hollweg, was still more blunt in his admissions before the Reichstag on the same day. "Our troops have occupied Luxemburg and have perhaps already entered Belgian territory. That is a breach of international law. . . . Thus we have been forced to ignore the rightful protest of the governments of Luxemburg and Belgium. The wrong—I speak openly—the wrong we thereby commit we will try to make good as soon as our military aims have been attained. He who is menaced as we are and is fighting for his highest possession, can only consider how he is to hack his way through."²

¹ B. G. B., 51.

² *Ibid.*, 35.

On the morning of August 3, the Belgian government replied to the "very confidential" note with a refusal to accede to the request,¹ and immediately notified its representatives abroad of its action.² The French Minister assured the Belgian government that his nation as a guarantor stood ready to respond to an appeal for help, but was informed that Belgium did not, as yet, feel that such an appeal would be warranted.³ Early the following morning, however, the German troops crossed the Belgian border at Gemmenich.⁴ That evening an appeal was made by the Belgian government to the courts of Great Britain, France and Russia, for cooperation in defense of its territory.⁵ France and Russia replied favorably.⁶ Since they were already involved in the war their reply was a foregone conclusion; and the attitude of Great Britain was, from the first, a matter of certainty. While using every effort to maintain peace, that power had already let it be understood, both at Brussels and Berlin, that under certain circumstances it might not be possible for it to remain neutral in the approaching struggle.⁷ Upon receipt of the Belgian appeal, Sir Edward Grey addressed the House of Commons, declaring that diplomatic intervention had already taken place, apparently to no avail, and that it was now necessary for the British government to formulate a definite policy to be pursued. He based his chief appeal for support, not on national honor, and the obligation which rested on England to fulfil the guarantee, but rather on British interests, which would be jeopardized should Germany gain control of the Belgian and French coasts on the North Sea.⁸ It was only after quoting from Gladstone that he placed his appeal on the higher plane of

¹ *Ibid.*, 22.⁴ *Ibid.*, 30.² *Ibid.*, 23.⁵ *Ibid.*, 40.³ *Ibid.*, 24.⁶ *Ibid.*, 52.⁷ B. B. B., 99 and 101.⁸ Stowell, E. C., *Diplomacy of the War of 1914*, (New York, 1915), 353ff; original speech of Gladstone, Hansard, CCIH, 1787.

moral obligation. That statesman had declared that Great Britain had an interest in the independence of Belgium wider than that which it might have in the literal operation of the guarantee. "It is found in the answer to the question whether, under the circumstances of the case, this country, endowed as it is with influence and power, would quietly stand by and witness the perpetration of the greatest crime that ever stained the pages of history, and thus become a participator in the sin."

After consultation with the Cabinet Sir Edward Grey had announced to the Belgian Minister that if Belgian neutrality were violated war with Germany would result,¹ and, on August 4, he sent to Berlin a telegram protesting against the action of the German government, and again requesting a pledge that Belgian neutrality should be respected.² The reply was that the German government had been compelled to disregard Belgian neutrality, it having been for her a question of life or death to prevent French advance; but that it would, under no pretext whatever, annex Belgian territory.³ In reply the British government asked immediate assurance that Germany would respect Belgian neutrality; and declared that if this assurance were forthcoming His Majesty's government would feel bound to take all steps in their power to uphold the neutrality of Belgium and the observance of a treaty to which Germany was as much a party as England.⁴

That afternoon the British Ambassador at Berlin called upon the Secretary of State and inquired whether his government would respect Belgian neutrality; but was informed that Belgian neutrality had already been violated.⁵ Later in the evening he called on the Imperial Chancellor, and the oft-quoted conversation furnished one of the by-words of

¹ B. G. B., 26.

⁴ *Ibid.*, 159.

² B. B. B., 153.

⁵ *Ibid.*, 160.

³ *Ibid.*, 157.

the war. We quote from the official report of Sir Edward Goschen. "I found the Chacellor very agitated. His Excellence at once began a harangue which lasted for about twenty minutes. He said that the step taken by His Majesty's government was terrible to a degree; just for a word —'neutrality,' a word which in war time had so often been disregarded, just for a scrap of paper, Great Britain was going to make war on a kindred nation which desired nothing better than to be friends with her. . . . What we had done was unthinkable; it was like striking a man from behind while he was fighting for his life against two assailants. He held Great Britain responsible for all the terrible events which might happen."

The British Ambassador declared that Great Britain made the question one of national honor, and when reminded of the consequences which might follow, informed the infuriated Chancellor that fear of consequences could hardly be regarded as an excuse for breaking solemn engagements. Here, at last, Great Britain appeared before the world as the champion of the sacredness of treaty obligations, and surely, no one would deny that her case was made stronger by the step. It is significant that when, on August 6, Mr. Asquith, the Prime Minister, addressed the House of Commons on the war which was by this time a certainty, he based his appeal for support absolutely upon moral grounds. "If I am asked what we are fighting for, I reply in two sentences. In the first place, to fulfil a solemn international obligation. . . . Secondly, to vindicate a principle; in these days when force, material force, sometimes seems to be the dominant influence and factor in the development of mankind, we are fighting to vindicate the principle that small nationalities are not to be crushed, in defiance of international good faith, by the arbitrary will of a strong and overmastering power. The maintenance of this principle is vital to the civilization of the world."¹

¹ *Times Hist.*, II, 428.

CHAPTER XII

CONCLUSION

WHETHER or not permanent neutrality is to continue as one of the institutions of Europe can not now be said. The Treaty of Peace with Germany of 1919 expressly states, (Article XXXI), that "the Treaties of April 19, 1839, which established the status of Belgium before the war no longer conform to the requirements of the situation;" and Germany consented to their abrogation and undertook to recognize and observe whatever conventions might be entered into by the Principal Allied and Associated Powers to replace those Treaties. By Article XL Germany made similar stipulations with regard to Luxemburg, renouncing her rights to the exploitation of the railways, and accepting the termination of the regime of neutrality of the Grand Duchy. Hence it would seem that the only permanent neutrality to survive the World War is that of Switzerland, and even in this case the Allies are not averse to admitting the Swiss pretension that this neutrality is recognized, but not guaranteed.

However, the Constitution of the League of Nations seems to imply the desire on the part of the powers to guarantee the integrity and political independence of all its members. Article X states that "the Members of the League undertake to respect and to preserve as against external aggression the territorial integrity and existing political independence of all Members of the League," and empowers the Council to advise on the means necessary for fulfilling this obligation in case of aggression or threat thereof. Since any violation of the neutrality of a state would constitute an act of external aggression, it would seem that member-

ship in the League gives to any state a guarantee of protection, which would make permanent neutrality unnecessary. This was apparently the "international arrangements" which the makers of the Peace Treaty had in mind, which were referred to in Articles XXXI and XL, and for which they demanded the consent of the German government. This was undoubtedly the interpretation given Article X in America, and it furnished a foundation for the stubborn opposition to the Treaty which developed in this country; for the general sentiment in America revolted against the task of standing guard to maintain the *status quo* in Europe. The very recent interpretation of the terms of Article X, (Dec., 1920), which has been given out by the Assembly of the League of Nations at Geneva, is probably an attempt to compromise with this growing opposition. It certainly is far from the original understanding of the plans and purpose of the League. Only a skilful diplomat could point out an actual difference of meaning between the pledge "to respect and preserve against external aggression" of Article X of the recent Treaty, and the pledge "to respect and cause to be respected" of the Treaties which created the permanent neutralities. Furthermore, should an injured member appeal to the League for protection or redress the Members are, by the terms of the Treaty, bound to assist the injured party as directed by the Council. (Article XVI.)

What the outcome of the present attempt at World Organization will be only the future can tell; and the continuation of the institution of permanent neutrality, as well as of many other international institutions, depends largely on this outcome.

We have seen, in this study, how the neutralization of disputed territories was frequently suggested as early as the 16th century, but was never put into successful operation until 1815, when the wishes of the Swiss people were recognized as being in harmony with the best interests of

Europe. We have outlined the circumstances under which the permanent neutrality of Belgium was created in 1831, and that of Luxemburg in 1867; and have followed the fortunes of these states to the present. We have seen how the neutralities of Cracow, of the Congo, and of Samoa, were created, but failed to stand the test of time.

We have gone into a technical study of the rights and duties of permanent neutrals, giving at the same time, a historical exposition of the instances when these rights and duties have created concrete international problems for solution. In so doing we have followed the history of one phase of European Diplomacy for over a century. It is not our purpose to estimate the value of the institution. In order to do this it would be necessary to say what the history of the century would have been, had the permanent neutralities not been created. This would take us into the field of speculation, and this field lies outside of the realm of historical research. We may add in closing that the neutrality of Switzerland has been preserved for one hundred and five years; that of Belgium was respected for eighty-three years, and upon its violation in 1914 aroused the condemnation of the world for German perfidy; that of Luxemburg was respected for forty-seven years; and that of the Congo, while but a hybrid arrangement, served to harmonize European interests in Central Africa so that no serious threat of international conflict has arisen in that part of the world.

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VITA

The author of this study was born at Sherman, Wayne County, Pa., on October 25, 1887. He was graduated from the Lanesboro, Pa., High School in 1907, and from the Mansfield, Pa., State Normal School in 1909. He then served for four years as Principal of the High Schools located at Le Raysville, Pa., and Rush, Pa. In 1913 he entered the ministry of the Methodist Episcopal Church, received the Degree of Bachelor of Arts at Syracuse University in June, 1916, and acted for the following two years as Teaching Fellow in History in that institution. While there he took Graduate Courses with Professors Flick, Sperry, Lauber, Tanner, Peritz and Parsons. In 1918 he was appointed to a Carnegie Endowment Fellowship in International Law, and chose to attend Columbia University. He was reappointed to the Fellowship in 1919. While at Columbia he attended courses under Professors John Bassett Moore and Munroe Smith, and Messrs. Henry Fraser Munro and Godoy. Upon leaving Columbia he was elected Instructor in European History and International Law in Allegheny College. His service there is to be continued for the College Year 1921-22, with the rank of Assistant Professor.

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